

**DURBAN REVIEW CONFERENCE (DRC) FOLLOW-UP COMMITTEE-NEPAL**

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**NEPAL**

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**INTRODUCTION ABOUT DRC**

The Conference held in Geneva in April 2009 provided a unique opportunity to review the Durban Declaration and Programme of Action (DDPA) made in Durban in 2001 on racism, racial discrimination, xenophobia and all forms of intolerance. The Government of Nepal took leadership in the Conference by recognizing that discrimination on the basis of caste, gender; ethnicity, religion and Untouchability are causes of inequality and exclusion in Nepali Society. The Government needs and intends to take firm and decisive action.

The civil society organizations of Nepal known as the DRC Follow Up Committee - Dalit, Janajati, Madhesi, gender and sexual minorities, religious minorities and women - made a joint report to the Durban Review Conference in Geneva. TDRC Follow up Committee is a national coalition having 134 member organizations.

**I. METHODOLOGY**

1. This report follows the guidelines adopted by the Human Rights Council. It refers to continuities of law and practice impacting on human rights and focuses on incidents occurring within the last four years. The information contained in this report was collected by Durban Review Conference (DRC) Follow-up Committee Nepal from a series of national and regional consultation workshops and focused group discussions involving human rights workers and other stakeholders. DRC committee includes 134 civil society organizations of indigenous peoples, Dalits, disables, Madhesi, Muslim and sexual and gender minorities.

**II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

**A. Scope of international obligations**

2. Nepal has ratified a number of international conventions and treaties some of which are- International Covenant on Civil and Political Rights (ICCPR) , International Convention for the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Labor Organization Convention No.169, Convention on Biological Diversity (CBD), Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol, and has firmly supported the United Nations Declarations on the Rights of Indigenous Peoples (UNDRIP). To date, the commitments implied in this firm support have not been fulfilled and neither has the government found it possible to conform with ratified treaties at the domestic level.

3. By virtue of being a party of the stated treaties, Nepal has to comply with: Concluding observations of the Committee on Economic, Social and Cultural Rights for Nepal (16 January 2008); CERD General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system (22 August 2002), recommendations of Special Rapporteur on the situation of human rights and freedoms of indigenous peoples A/HRC/12/34/Add.3 and, Concluding observations of the Committee on Elimination of Racial Discrimination for Nepal (28 April 2004). Unfortunately the government has not fully and effectively implemented either the recommendations or the concluding observations contained in these instruments.

#### **A. Cooperation with human rights mechanisms**

4. Although the government invited a Special Rapporteur on the rights and freedoms of indigenous peoples to Nepal, his recommendations<sup>1</sup> along with the programs and provisions of the Durban Declaration and Program of Action (DDPA) have yet to be fully implemented. The same is true for<sup>2</sup> the recommendations of the Durban Review Conference Outcome so that the record of the government in this regard, as with its treaty reporting obligations, needs significant improvement.

#### **B. Implementation of international human rights obligations**

##### **1. Rights of indigenous peoples**

5. **Implementation status of International Labour Organization Convention No.169 and United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):** Nepal has yet to implement the international standards applicable to indigenous peoples, as set out in the UNDRIP and Convention No. 169 and indigenous peoples rights to self determination.<sup>3</sup> The government needs to meet its obligations to indigenous peoples in line with observations and recommendations made by the Special Rapporteur.<sup>4</sup>

##### **The government should:**

- Urgently implement Convention No.169 and the UNDRIP and change existing laws and policies to give due recognition to the indigenous peoples' laws, traditions, customs and land tenure systems in line with standards set forth in the Convention No.169 and UNDRIP.
- Consider the implementation of the recommendations of the Special Rapporteur and the Concluding observations of CERD Committee with urgency and priority.

6. **Right to language, culture and religion:** Though currently 59 indigenous peoples have been recognized officially, many other indigenous groups are yet to be recognized by the state which has reinforced the marginalization of non-recognized indigenous peoples. Recognition of Nepali language as the official language has created obstacles to accessing education and government services, as well as public information,<sup>5</sup> and many indigenous languages are under threat.<sup>6</sup> According to Quadrupeds of the Country Code 1963, cow slaughter is an offence punishable by up to 12 years of imprisonment. But, some indigenous peoples and others practice the ritual sacrificing of bullocks in traditional rites.<sup>7</sup>

##### **The government should:**

- Recognize indigenous languages for use in state affairs alongside Nepali.
- Adopt a policy of Mother tongue multi-lingual Education.<sup>8</sup>
- Ensure the rights of indigenous peoples to maintain and develop their language, distinct cultures and religions.

18 **Right to land and natural resources:** As a result of numerous discriminatory laws and practices<sup>9</sup>, indigenous peoples are historically deprived of land and natural resources. The dominant groups have expropriated land, habitats, water and other natural resources<sup>10</sup> that were once communally owned known as *Kipat*<sup>11</sup> by the indigenous peoples. The most important characteristic of this form of land tenure is the inalienability of the land: as *Kipat* land was tied to the social group, it could not, given its nature, be sold to immigrants (Remgmi, 1978) According to the Land Evictions of the Country Code (1963), *Kipat* which lacks official documents, is equivalent to *Raikar*<sup>12</sup> lands on which taxes can be levied. This has led to the loss of indigenous based communal ownership i.e. transforming *Kipat* land into *Raikar* which can be used, transferred, and disposed of by anyone. Development projects, Leasehold and community forest<sup>13</sup>, National Parks<sup>14</sup>, and Hydro-projects<sup>15</sup> have displaced many indigenous peoples from their ancestral lands and territories thereby denying those people their rights to consultation, participation, benefit-sharing and natural resources<sup>16</sup> as recommended by the ESCR.<sup>17</sup> Indigenous knowledge is not protected through legal provision that includes the use of copyright, certification marks and design, collective trademarks, patent law, moral rights and equitable sharing of the benefit arising from the utilization of traditional knowledge in line with CBD Article 8 (j).<sup>18</sup>

**The government should:**

- Take tangible measures to recognize and protect the rights of indigenous peoples to own, control, develop and use their ancestral lands, territories and natural resource.
- Consider special measures to get FPIC from indigenous peoples prior to executing any development project or undertaking any other activity which materially affects their lives
- Take measures to protect indigenous knowledge and take legal action for patent right in line with CBD 8 (j), Article 27 of ICCPR, ILO 169 and UNDRIP.

7. **Rights of indigenous women:** There is no disaggregated data for indigenous women which would reveal their true situation. Owing to relative differences in literacy rates, land ownership status, occupation, language, population size, and educational status, the systematic practice of social exclusion of indigenous women is experienced at very different levels to those experienced by non-indigenous women.<sup>19</sup> Hence, indigenous women are severely under-represented<sup>20</sup> in decision-making structures, not only at the national level, but also at the local levels. This is not yet addressed as required by the recommendation of ESCR.<sup>21</sup>

**The government should:**

- Ensure the proportional participation of indigenous women at all decision-making levels.
- Take steps to include disaggregated data for indigenous peoples and indigenous women in the forthcoming National Census 2011.

8. **Ongoing constitution making process:** The government has yet to begin implementing the provisions of Free, Prior, and Informed Consent (FPIC) to ensure the participation of indigenous peoples through their own freely chosen representatives<sup>22</sup> in the drafting processes of the new constitution. Indigenous peoples have serious concern as the draft reports<sup>23</sup> of the thematic committees of the Constituent Assembly do not incorporate the fundamental rights of indigenous peoples in line with international standards.<sup>24</sup>

**The government should:**

- Take steps to ensure the participation of indigenous peoples through their own freely chosen representatives with FPIC in the ongoing constitution-making process and in all decision-making processes.
- Recognize UNDRIP as the principal framework for drafting the New Constitution and recognize the right of self-determination of indigenous peoples in the New Constitution.

**2. Rights of the Dalit community**

9. **Non-discrimination:** The term Dalit refers to people who are religiously, culturally, socially, economically and historically oppressed, excluded and untouchables. The Dalit community lives in many regions of Nepal, practices many faiths, is multi caste and multi lingual and embraces a rich multi-cultural diversity.<sup>25</sup> Despite national and international provisions legislating against discrimination, Dalits are the *de facto* 'untouchables' of contemporary Nepal. They are frequently denied access to public places and the right to drink water from public wells. They are the victims of violence to prevent participation in inter-caste marriage and endure an estimated 205 forms of discriminatory practice in their daily lives.<sup>26</sup>

10. **Right to equality:** Understandably the need to enact and implement special laws and measures to eliminate caste-based discrimination and untouchability and the dismissal of existing discriminatory provisions<sup>27</sup> are fundamental concerns of the Dalit community. There are 23 discriminatory provisions existing in several laws related to the Dalit community<sup>28</sup> and the CESCR has made appropriate recommendations for the enactment of just such a special law.<sup>29</sup>

**The government should:**

- Enact a separate and special law to eliminate caste-based discrimination and untouchability practice, including provision for prosecuting the culprits and compensating the victims.
- Repeal all those discriminatory laws, regulations, rules, directives, policies and programmes which are in contravention of human rights.

11. **Right to citizenship and identity:** Some Madhesi Dalits have been denied their right to acquire citizenship. Similarly, some Dalits who belong to hill or Madhesi origin, have been denied their right to get citizenship using their given family name, where this is a name used frequently by so-called upper castes.<sup>30</sup>

**The Government should:**

- Ensure the citizenship rights of Madhesi Dalits.
- Ensure the citizenship rights of all Dalits recognising their family name and identity.

12. **Right to participate in public and political life:** Although, recommendation 17 of CERD (2004) for due representation in government, legislative bodies, the judiciary and other decision-making bodies at all levels<sup>31</sup> of the state is clear, the government of Nepal has yet to implement these recommendations. Nepali Dalits are still excluded from state structures particularly with regard to decision-making and at the agency implementing level.

**The government should:**

- Ensure ‘proportionate with compensation representation’ in every level and sector of the state with regard to decision-making.

13. ***Right to special provision:*** Despite, recommendation 32 of CESCR 1998 and constitutional provision on the rights of Dalits to ‘Special Provisions’<sup>32</sup>, specifically for ‘proportional with compensatory representation’ in every state structure, no adequate policy has yet been developed or implemented.<sup>33</sup> Neither has the Government yet devised special programs for ex-Haliyas from the Dalit community.<sup>34</sup>

**The government should:**

- Adopt the necessary constitutional, administrative, legal and institutional measures for special provision for Dalits as well as an action policy to ensure their effective implementation.

14. ***Strengthening the National Dalit Commission:*** The government has yet to adopt a law to make the National Dalit Commission a statutory body in accordance with CERD 2004, recommendation No.11.

**The government should:**

- Establish the National Dalits Commission as a constitutional and statutory body by passing the necessary legislation.

15. ***Right to social security and to an adequate standard of living:*** A study shows that 23% of hills origin Dalits and 44% of Madhesi Dalits are entirely landless<sup>35</sup> along with the *Haliyas* (a kind of bonded labor) who were tied to working on other people’s land. The Government of Nepal has freed the *Haliyas*, many of whom are Dalits, from their bondage through an agreement made in 2008, but it has not made any special programs for them and particularly for the women among them. Suitable programmes to support these landless ex-Haliyas need to be implemented in the rural areas as a matter of priority.<sup>36</sup> The government has not made further policy and program to ensure the, prerogative rights for their indigenous knowledge and occupation and equal benefit sharing of natural resources.

**The government should:**

- Address the issue of ex-Haliyas and the arrangement policy, laws and programs surrounding them to ensure suitable areas of land which will provide an adequate standard of living.
- Arrange policy, laws and programs to provide adequate areas of land for all landless Dalits family, prerogative rights for their indigenous knowledge and occupation and ensure the equal benefit sharing of natural resources.

16. ***Rights of Dalit Women:*** *Badi* is a marginalized caste within the Dalit community who was traditionally an artisan and musician group before becoming caste-based sex workers. The government of Nepal made an agreement in 2007 with *Badi* women to meet their demands, but the commitments made by the government have yet to be implemented.<sup>37</sup> More generally, the level of representation of Dalit women in all levels of state structure is far less than for other women.

**The government should:**

- Consider formulating policies, strategies and programs to eliminate gender and caste based discrimination against Dalit women; to eradicate the sex exploitation of Badi women and to implement previous agreements made with them.
- Consider and implement measures to ensure the proportionate representation of Dalit women so that it compares favourably to that of women in general.

17. **Rights of Dalit children:** Despite international and national obligations, Dalit children are facing caste-based discrimination and untouchability in schools, temples and other public areas as well as in private places. Lacking of education, malnutrition, child labour, trafficking and sexual violations are other serious concerns affecting Dalit children.

**The government should:**

- Urgently implement measures to enforce children's rights to education, adequate food, health services and freedom from child labour, trafficking and sexual violation.

**3. Rights of persons with disabilities**

18. **Representation, participation and education:** Nepal ratified the Convention on the Rights of PWDs and its Optional Protocol on 27 December 2009. The meaningful participation of PWDs in the constitution-making process along with the representation and participation of PWDs across the public sector more generally has yet to be realized. *De facto* discrimination against PWDs still occurs in the field of education, employment, health, housing, and many other areas including Altogether 68% of PWDs have no education (59.6% of male and 77.7% of females).<sup>38</sup> Nearly half of all children with disabilities have not been able to benefit from education services. The education system is not user-friendly towards PWDs and with regard to.

**The government should:**

- Urgently adopt the policy of providing reasonable accommodation for employment, transportation, sports, personal attendance and health services, in housing, transport, sports and cultural life, personal attendance services for PWDs;
- Take stricter measures to combat discrimination against PWDs in line with the DDPA.
- Implement the CRPD and its Optional Protocol and incorporate the provisions of this convention in the new Constitution of Nepal;
- Urgently adopt special measures to provide education including the use of Braille script and sign language, with reasonable accommodation for PWDs;
- Take steps to ensure the participation of PWDs in the ongoing Constitution-making process and ensure the participation and representation of PWDs in public sector;
- Ensure multi language policy for official use and mother language in curriculum and text books of school including brail script and tacdil language for person with disabilities.

19. **Social security of PWDs:** While there is no social security plan as such in Nepal. There are certain provisions which may be applicable to some, including PWDs within society. Supports currently provided to PWDs is charity based and this should be transformed in to rights based support. No provisions for personal assistance (PA) for PWDs, elderly people, orphans, homes where people with disabilities live, especially women and children, have been made.

**The government should:**

- Enact and implement laws guaranteeing basic social security arrangements for PWDs.

20. **Rights of women with disabilities:** There is still a considerable amount of social stigma attached to disabled women and their families and they suffer from gender based violence in the form of rape, domestic violence and sexual harassment. They are discriminated against in relation to education, employment, marriage and access to resources and mobility. There are no legally binding acts to protect and promote the rights and interests of women with disabilities.

**The government should:**

- Enact a separate law to eliminate discrimination against women with disabilities.
- Strengthen existing measures to thoroughly investigate crime related to violence against women.
- Ensure the participation and representation of women with disabilities in the public sector.

**4. Rights of the Muslim Community**

21. **Non-recognition and exclusion:** The state has failed to recognize Muslims as a religious minority because of the state's tendency to define Muslims as *Islamists* rather than as a community.<sup>39</sup> As a result, Muslim people have been excluded from the public sector and they continuously suffer from various form of discrimination with regard to participation and economic, social and cultural rights.<sup>40</sup>

**The government should:**

- Recognize the existence of the Muslim community as a religious.
- Ensure concrete and active efforts are made to promote the participation of Muslims in the public sector.
- Intensify existing efforts to protect religious freedom and freedom of expression of the Muslim community.
- Establish a Muslim Commission to monitor the implementation of programs to protect and promote the full enjoyment of their human rights in particular ESCR.

22. **Right to language, Culture and religion of Muslim community:** The government has not recognized legally the marriage and divorce of Muslims that take place in accordance with the *Islamic* religion, nor other social traditions and customs based in Muslim family law. In addition, Muslim people have less access to health, justice and education because of a language barrier.

**The government should:**

- Recognize and respect the distinct customs, culture, language, and way of life of the Muslim community particularly with regard to Muslim marriage and divorce.

23. **Right to education:** Only a few *Madarsa* schools are recognized as formal education institutions and these are only up to Primary Level. This has affected mostly Muslim girls, who generally do not attend modern school and only go to *Madarsa* for their basic education.

**The government should:**

- Adopt measures to recognize *Madarsa* education as accepted formal educational institutions up to higher level.

24. **Muslim women's rights:** Muslim women suffer from multiple forms of discrimination -as women, Muslim women and women within the Muslim community. They are- ill represented in all levels of governance.

**The government should:**

- Ensure the participation and representation of Muslim women in state mechanisms on the basis of the principles of inclusion.

**5. Rights of Terai-Madhesi People**

25. **Right to equality and non-discrimination:** Madhesi people in Nepal are discriminated against on the basis of color, region, language and socio-cultural identity. There is a major problem with extra judicial killing which is widespread in the Terai-Madhes. They are scattered across 22 districts of the Terai-Madhes region and constitute around 48 percent of the population of the country. The Madhesi community reflects multi-ethnic, multi-caste, multi-lingual and multi-cultural diversity. The almost total exclusion of *Madhesi* people from the Nepali army and the need to implement agreements and commitments confirmed with political parties of Terai-Madhes need to be addressed.<sup>41</sup>

**The government should:**

- Eliminate color, region, language and socio-cultural identity-based discrimination towards Terai-Madhesi people.
- Ensure 'proportionate representation' in every level and sector of the state and public sector with regard to decision-making.
- Take action to implement the commitments and agreements with Madhesi political parties.
- Act urgently to eliminate extra judicial killing and impunity in Terai-Madhes.

26. **Rights of Madhesi women:** Madhesi women, especially Madhesi Dalits women, have been denied their citizenship rights. Due to the dowry system, Madhesi women have faced domestic violence, including murder; gender based abortion, and unwanted divorce.

**The government should:**

- Ensure the rights of citizenship for the Terai-Madhes women.
- Eliminate dowry (Dahej) practices and other atrocities towards Madhesi women.

**6. Sexual and Gender Minority**

27. **Non-discrimination and right to citizenship:** The Sexual and Gender Minority is a newly recognized minority group in Nepal. The sexual and gender minority includes LGBTIs, who continue to bear social, economic and political discrimination based on their sexual orientation and gender identity. The state authorities continue to deny citizenship cards to some members of LGBTI, especially for third gender, reflecting a clear sexual or gender identity. Moreover LGBTIs undergo much social antagonism in the course of their daily lives.

**The government should:**

- Ensure citizenship rights with clear gender identity in relevant cases.
- Eliminate exclusion of LGBTIs from daily socio-cultural activities,
- Ensure that sexual orientation and gender diversity are included as grounds for protection in the new constitution and in legislation.

- Ensure that infrastructure, including public facilities are LBBTI friendly.

28. **Right to choose le life-partner and social security:** Despite a Supreme Court directive order to reform Nepali legislation so as to allow for right to choose life partner, and to recognize all members of LGBTI as natural persons,<sup>42</sup> this has yet to take place. According to research<sup>43</sup> there are 280 unfriendly legal provisions in existence against sexual and gender minority members in Nepal.

**The government should:**

- Amend all discriminatory as well as LGBTI unfriendly laws and legal provisions.
- Ensure the individual right to choice of life partner.
- Take action to control unlawful arrest and torture by police.

29. **Right to participate in public and political life:** There is no special provision to include LGBTIs in the state structures and it is notable too that LGBTIs are discriminated against in the Nepal Army and police in relation to employment, both with regard to recruitment and to their treatment if they are identified as LGBTIs when serving.

**The government should:**

- Adopt affirmative action policies to ensure equal opportunities and proportional participation in every structure of the state.
- Take action against discrimination in the Nepal army and police on the basis of sexual orientation and gender identity.

### **III. CAPACITY- BUILDING AND TECHNICAL ASSISTANCE**

This joint submission recommends to the international community that it provides assistance to the Nepal government in relation to the areas listed below:

- Technical support to the National Dalit Commission, National Women's Commission and National Foundation for the Development of Indigenous Nationalities and National Human Rights Commission to monitor and to coordinate efforts in addressing the human rights situations of indigenous peoples, Dalits, Muslim, Madhesi people, PWD e and the Sexual minority.
- Technical and other forms of support for the implementation of Convention.169 and UNDRIP relating to indigenous peoples including DDPA.
- Technical support to study the discriminatory provision in existing Nepalese laws and its amendment, to study multiple forms of atrocities towards Dalits, impunity and formulation of anti-discriminatory laws.
- Technical and institutional support to establishing transparent and accountable monitoring mechanism on the implementation of anti-discrimination and affirmative action policies and legal provisions.
- Technical support to formulate and implementation of proportional representation with compensatory representation policy, legislation and programs.
- Technical support for development of guidelines for planning and implementation of development planning and budgeting with a view to secure full inclusion of Dalits, taking in to consideration the need for disaggregated data and caste sensitive analysis for mainstreaming and inclusion of Dalits in the development process and as well as provision of and full implementation of special measures.

- <sup>1</sup> See the country report of Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya-Mission to Nepal (A/HRC/12/34/Add.3)
- <sup>2</sup> See the report of "Nepalis Civil Society to Durban Review Conference, 2009"
- <sup>3</sup> The UNDRIP acknowledges that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights<sup>1</sup> and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. Article 3 in particular of the UN-DRIP state that indigenous peoples have the right to self-determination and by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.
- <sup>4</sup> The recommendations made by the Special Rapporteur on the situation of the human rights and fundamental freedom of indigenous people, the concluding observation of ESCR (Thirty-eighth session, 30 April – 18 May 2007) and the communication of the CERD Committee.
- <sup>5</sup> Forum for Women, Law and Development 2009 (FWLD) "*Discriminatory Laws Against Women, Dalits, Ethnicity, Religious and Persons with Disability*"
- <sup>6</sup> Subba et al (2008) "*Nepal Federation of Indigenous Nationalities (NETFIND)-Janajati Empowerment Project (JEP) Review of Achievements and Impacts (2002-2008)*", p.47
- <sup>7</sup> Kirat people of the eastern Nepal have commonly sacrifice bullocks in their ancestor worship ritual and consume beef meat.
- <sup>8</sup> A definition says as "Multilingual Education typically refers to "first-language-first" education that is, schooling which begins in the mother tongue and transitions to additional languages. Typically, MLE Programs are situated in developing countries where speakers of minority languages tend to be disadvantaged in the mainstream educations system." [http://en.wikipedia.org/wiki/Multilingual\\_Education](http://en.wikipedia.org/wiki/Multilingual_Education)
- <sup>9</sup> Land Reformed Act 1964 that nationalized land and terminated traditional collective land tenure system, for instance, *Kipar*; Forest Act 1993 that displaced indigenous peoples from their traditional forests and transferred primarily to non-indigenous community forest user groups; The Pasture Land Nationalization Act 1975 nationalized pasture lands of indigenous peoples; The National Parks and Wildlife Conservation Act (20 per cent of total land) provides no recognition of indigenous peoples' right to consultation or to access their traditional lands and resources, while giving quasi-judicial powers to the park chief wardens and so on.
- <sup>10</sup> Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples Report 2007-A/HRC/12/34/Add.3
- <sup>11</sup> Traditional land tenure system. In this system, "A Kipat owner derives rights by virtue of his membership in a particular ethnic group, and/or its location in a particular area. In contradiction to the Raikar system of land tenure and its derivatives, therefore, Kipat represents a communal form of land tenure." (Regmi 1978:534).
- <sup>12</sup> Raikar is a form under which the state functions as the landowner.
- <sup>13</sup> A case study conducted very recently by Nepal Chepang Association (NCA) concluded that in the name of Leasehold forest programs Chepang, an indigenous group, are denied to practice their traditional way of livelihood known as Khoriya (slash and burn) as a result, they were found to have been suffering from acute food shortage.
- <sup>14</sup> The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples visited Nepal in 2008 and observed that "Protected areas, including National Parks have been created at the expense of indigenous lands or in the traditional lands. Such projects for instance, Chitwan National Park displaced Tharu, Bote, Darai and other indigenous communities and have not been provided alternative livelihood and proper compensation. Now these communities have become landless, they are prevented from gathering fuel wood, gathering food and medical herbs etc." p.11 para. 34-35
- <sup>15</sup> A case study by LAHURNIP: Kulekhani hydro-project displaced thousand of Tamang indigenous community from their traditional lands without proper compensation; they are now living without electricity facilities. In that before the execution of this project, according to the case study, they were not consulted neither did they get a chance to have a voice in the decision-making process. A similar case is the Arun III hydro-project. Arun III is one of the mega projects of Nepal situated in Yamphu and Lohorung indigenous territories and it was much debated in the 1990s from an environmental perspective. Nepal government has recently signed a MoU with an Indian state-owned company Sutlej Vidhyut Nigum without free, prior, informed consent of affected indigenous communities.
- <sup>16</sup> The Article 15.1 of the Convention 169 specifies that indigenous peoples have rights to the natural resources of their territories, including the right to participate in the use, management, protection and conservation of these resources and Article 15.2 stipulates that indigenous peoples have rights regarding consultation, participation in the benefits of resource exploitation.

- <sup>17</sup> The general recommendation XXIII on the rights of indigenous peoples of the Committee No.3 states that "The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized".
- <sup>18</sup> Article 8 (j) and related provisions is the main instrument that Parties to the Convention on Biological Diversity have given themselves to achieve the commitments in Article 8(j) to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, to promote their wider application with the approval and involvement of the holders of such knowledge, and encourage the equitable sharing of the benefits arising from the utilization of traditional knowledge.
- <sup>19</sup> Nepalese indigenous women have been suffering from triple standard exploitation-patriarchy, state mechanism and policies and women within indigenous communities. Different studies show that 96% indigenous lower level of education. The literacy rate among indigenous women is 25% in average. 10% women get access to health services and 90% rely on traditional medicine. Only 0.76% indigenous women are represented in the major political parties.
- <sup>20</sup> Gurung Jyoti (2008) "*Status of Indigenous Nationalities Women.*" In Nepal Indigenous Journal Vol.1; No.1
- <sup>21</sup> The concluding observation of ESCR (Thirty-eighth session, 30 April – 18 May 2007) states "Ensure that, in the Constitutional process, disadvantaged and marginalized groups, particularly the Dalit, Madhesi and indigenous communities, and women within these groups, are represented in decision-making bodies at all levels."
- <sup>22</sup> Article 18 and 19 of the UN Declaration on the Rights of Indigenous Peoples stipulate these rights. In addition, Convention No. 169 contains numerous reference Articles 2, 4, 6, 7, 15, 16, 20, 22, 23, 25 27 and 33.
- <sup>23</sup> The thematic reports of Constitution Assembly are Available at: URL: [www.can.gov.np](http://www.can.gov.np)
- <sup>24</sup> See the request submitted to the United Nations Committee on the Elimination of Racial Discrimination (Seventy-fifth Session 3-28 August 2009) by ten indigenous peoples' organizations and an International organization (FPP) 29 July 2009
- <sup>25</sup> The Dalits community occupies 13 per cent of total population and comprised 21 castes; such as Badi, Damai, Gaini, Kami, Sarki, Bantar, Chamar, Chidimar, Dhobi (Hindu), Dom, Dusadh, Halkhor, Kakaihiya, Khatbe, Khatik, Kori, Tatma, Mushar, Pattharkatta, Pasi, and Sarvanga.
- <sup>26</sup> Bhattachan, KB. et. Al. 2003. *Existing Practices of Caste-based Untouchability in Nepal and Strategy for a Campaign for its Elimination.* Kathmandu: Action aid Nepal.
- <sup>27</sup> The constitutional provision on right against *untouchability* at public places, preamble provision (*chhotabada*) of the Civil Code, 1963 and a provision relating to respect of the social usages and practices are some of the instances (*Section 10 of Miscellaneous Chapter under Civil Code*). Still, there are many discriminatory provisions existed in different laws of the country incompatible with international human rights instruments. The study carried out by National Dalits Commission has revealed that there more than 23 discriminatory provisions. (NDC.2005. *Study of the discriminatory and amendable legal provision against Dalit community.* Kathmandu: National Dalit Commission )
- <sup>28</sup> Still, there are many discriminatory provisions existed in different laws of the country incompatible with international human rights instruments. The study carried out by National Dalits Commission has revealed that there more than 23 discriminatory provisions. (NDC.2005. *Study of the discriminatory and amendable legal provision against Dalit community.* Kathmandu: National Dalit Commission )
- <sup>29</sup> CERD (2004) Concluding Observation No. 12
- <sup>30</sup> For example, if any Dalits people use a certain surname which is commonly practiced by so called upper caste, they are denied to receive the citizenship with the surname.
- <sup>31</sup> CDESCR (2008) Concluding Observation No. 30
- <sup>32</sup> Article 13(3) the Interim Constitution of Nepal, 1990.
- <sup>33</sup> The Civil Service Act, 2049 (Second Amendment) Section 7(7), Nepal Police Regulation and Armed Police Force Regulation have also amended to arrange some important provisions on reservation for Dalits, women, indigenous/nationalities, Madhesi, disabled and backward areas. But only forty five percent of the posts has reserved for around 90 percent of population.
- <sup>34</sup> CDESCR (2008) Concluding Observation No. 37
- <sup>35</sup> Sustainable Development Forum. 2006. *Ownership of Dalits in Land: A Study.* Kathmandu: Sustainable Development Forum
- <sup>36</sup> CDESCR (2008) Concluding Observation No. 37
- <sup>37</sup> The government has done an agreement with *Badi* (one of the musician caste with in Dalits community) women on 16 October, 2007.

## Annex-2: Submission of DRC Committee Nepal

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<sup>38</sup> World Bank 2002: "*Country Profile Disabilities on Kingdom of Nepal* "

<sup>39</sup> Civil Society Report to Durban Review Conference 2009

<sup>40</sup> Id Chapter V

<sup>41</sup> The government had done the 22 points agreement with Madhesi Janadhikar Forum, on 30 August, 2007 and 6 points agreement with United Democratic Madhesi Front on 23 February, 2008.

<sup>42</sup> The Supreme Court (*in the case of Sunil Babu Pant vs. GON, Writ No.917, and December, 2007*) issued a mandamus order in the name of Government of Nepal to do those above mentioned issue.

<sup>43</sup> The legal provision against sexual and gender minority. A Research by Blue Diamond Society carried out in 2010.