

Country Technical Note on  
Indigenous Peoples' Issues

# Federal Democratic Republic of Nepal



Investing in rural people



IWGIA

**Country Technical Notes on Indigenous Peoples' Issues**  
**Federal Democratic Republic of Nepal**

Submitted by:

Shankar Limbu

Krishna B. Bhattachan

**Last update:**

**September 2022**

# 1. Main characteristics of indigenous peoples living in Nepal

## 1.1. Definition

A consultative meeting of indigenous experts and activists organized by the Nepal Federation of Indigenous Nationalities in 1994 defined "indigenous peoples" or "indigenous nationalities" as:

"(i) those communities which possess their own distinct tradition and original lingual and cultural traditions and whose religious faith is based on ancient animism (worshiper of ancestors, land, season, nature), 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 of 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) those communities which have been displaced from their own land for the last four centuries, particularly during the expansion and establishment of the modern Hindu nation State and have been deprived of their traditional rights to own the natural resources (communal land known as Kipat, cultivable land, water, minerals, trading points etc.); (iv) those who have been subjugated in the State's political power set-up (decision-making process), whose ancient culture, language and religion are non-dominant and social values neglected and humiliated; (v) those whose society is traditionally erected on the principle of equality – rather than the hierarchy of the Indo-Aryan caste system- and on gender equality or women enjoying more advantaged positions – rather than social, economic and religious subordination of women-, but whose social norms and values have been slighted by the State; and (vi) those which formally or informally admit or claim to be "the indigenous peoples of Nepal" on the basis of the aforementioned characteristics. The meeting also concluded that all nationalities are not indigenous peoples, but in Nepal all are indigenous. According to the National Foundation for Development of Indigenous Nationalities (NFDIN) Act, 2002, "indigenous nationalities refer to those ethnic groups or communities (...) who have their own mother tongue and traditional customs, different cultural identity, distinct social structure and written or oral history" (HMG-N 2002:170). The Nepal Government's definition of indigenous peoples falls short of the definition drafted indigenous experts and activists . economic and religious subordination of women-, but whose social norms and values have been slighted by the State; and (vi) those which formally or informally admit or claim to be "the indigenous peoples of Nepal" on the basis of the aforementioned characteristics|.

1. The Nepal Government's definition of indigenous peoples falls short of the definition drafted by experts on indigenous peoples, in the past and the present. Inconsultation programs organized by the Indigenous Guthi Nepal with Indigenous elders, academics, and experts identified seven defining elements of Indigenous Peoples in the context of Nepal. These are (1) History, (2) Lands, Territories, and Resources, (3) Language, (4) Belief Systems, (5) Customary Institutions and Practices, (6) Social Structure, and (7) Cultural Identity. The Guthi defined Indigenous Peoples as the aboriginal peoples of the first nations – (a) who have been continuously living in a definite territory within Nepal's political boundary since pre-historic times, (b) who have collective and deeper cultural and spiritual relations with their own

ancestral lands, and its natural resources, (c) who spoke languages belonging to Tibeto-Burman, Munda, and Dravid language families, (d) who have total faith in traditional animism and ancestor worship, (e) who have customary self-governing institutions and laws, (f) who have internalized egalitarian social structure and gender relations as opposed to the graded caste hierarchy, and (g) who express distinct collective identity through distinct oral or written historical tradition, crafts, music and songs, costumes, and foods.

The Guthi identified additional characteristics in defining Indigenous Peoples. These are: (1) Colonized and displaced by Khas-Bahun migration in the last four hundred years, and specially the Gorkhali military campaign, (2) deprived from customary rights due to nationalization of forest, water, pasture and other resources and recently becoming victims of development aggression including hydropower projects, wildlife protection programs and exploitation of natural resources for commercial use, (3) forced to adopt Khas Nepali belonging to alien language family and subsequent language extinction, (4) forced to adopt Hindu religion, culture and values through the state patronage, (5) forced to accept alien laws, and political, social and cultural institutions through the state patronage, (6) forced to accept state-imposed caste hierarchy and lowest social status, (7) forced to accept gender discriminatory laws by dismantling historical egalitarian gender relations, (8) deprived from intellectual property rights of arts, crafts, music, and natural healing system, (9) currently marginalized in politics, administration, and education, and turned economically poor.

## **1.2. History**

Indigenous peoples of Nepal have been living in Nepal since time immemorial. The influence of the Hindu religion, society, and culture began to intensify in indigenous peoples' society after the restructuring of the society of the Newars into 64 castes. This caste division was based on the division of labour (but not on varna, i.e., Brahman, Kshatriya, Vaisya, and Sudra) and purity from the pollution of water and food. Indigenous peoples of Nepal lost their autonomy and self-rule when Nepal was territorially integrated by King Prithvi Narayan Shah in 1769 (Bhattachan 2008). The constitution, laws, rules, and regulations have always been predatory to indigenous peoples. In the past, discriminatory land tenure systems such as the Birta and Jagir allowed the dominant caste, i.e., the Bahun-Chhetris, to own and control the lands of indigenous peoples (Regmi 1977; Regmi 1978). The first national legislation that was promulgated in 1854, popularly known as the Muluki Ain (Civil Code), was predatory to indigenous peoples because it legally categorized indigenous peoples as the Matwali or liquor-drinking caste, second in the four-fold caste hierarchy, and further subdivided into the —unslavable and —slavable. The first constitution of Nepal was introduced in the 1940s, and since then all the constitutions have been against social, cultural, and religious diversity.

The authoritarian regimes prevailed during most of the 240 years, except for brief periods from 1950 to 1960, 1990 to 2002, and 2006 to the present. Nepal is, now, a federal Democratic Republic. It is a multiracial, multi-caste, multi-ethnic, multilingual, multireligious, multicultural society. Currently, the Constituent Assembly is making a new constitution. The debates on the restructuring of the State have been polarized: non-indigenous people are against the autonomy and self-rule of indigenous peoples, and indigenous peoples strongly support their right to self-determination, autonomy, and self-rule.

### 1.3. Population

According to the census of 2001, the total population of Nepal is 23 million and it is now projected to be about 25 million; indigenous peoples comprise 38.8 percent of the total population.

Until now, any collective effort made by the indigenous peoples was charged and dismissed by the dominant castes and the rulers as —anti-national, —communal, —secessionist, —disintegrationist and —parochial. In 2002 the Government of Nepal officially recognized and listed 59 indigenous peoples (Nepal Rajpatra (Nepal Gazette), 7 February 2002). In 2009 it formed a task force to identify indigenous peoples on the list. Out of the 59 indigenous peoples, 18 are from the mountains, 24 from the Hills, 7 from the Inner Terai, and 10 from the Terai regions. These are shown in Box 1 on the next page.

Table 1 lists the names of indigenous peoples by their size as a percentage of the total population. The ones that are not identified by the census are even smaller than these smallest groups. Data indicate that most groups of indigenous peoples have small populations (each with less than 1 percent of the total population of Nepal).

Table 1. Classification of indigenous peoples by population size, Census 2001.

| Population in Percent | Indigenous Peoples   |
|-----------------------|--|
| 5 to 8 percent        | Magar, Tharu, Tamang, Newar (4)  |
| 1 to 3 percent        | Rai, Gurung, Limbu (3)   |
| 0.4 to 1 percent      | Dhanuk, Sherpa, Bhujel, Kumal, Rajbansi, Sunusuwar (6)   |
| 0.1 to 0.4 percent    | Majhi, Dnuwar, Chepang, Satar, Jhangad, Gangain, Thami (7)   |
| Less than 0.1 percent | Dhimal, Bhote, Yakkha, Darai, Tajpuria, Thakali, Pahari, Chhantyal, Bote, Baramu, Jirel, Dura, Meche, Lepcha, Kisan, Raji, Byansi, Hayu, Walung, Raute, Yholmo, Kushbadiya, Kusunda (23) |

Source: Adapted from Table 3, IIDS (2002:50)

The population of almost all indigenous peoples is concentrated in their own ancestral lands. In the mountain regions, such as Mustang, Manag, and Rasuwa, indigenous peoples comprise 75–95 percent of the population, but in the Hills and the Terai, indigenous peoples are less than 50 percent of the population because they are outnumbered by the migrant non-indigenous populations. The indigenous peoples in mountain areas still control and follow their indigenous way of life and the government machinery is in name only. On the contrary, many indigenous peoples of the Hills and the Terai have been losing control over their indigenous lands, resources and way of life because of the influence of the dominant groups through the processes of Gorkhalization, Hinduization, Sanskritization, Nepalization, and Westernization.

### 1.4. Ethno-regional groupings

As mentioned, the 59 indigenous peoples recognized by the Nepal Government are grouped into four regions (see Box 1 below). Their populations are concentrated in and around respective ancestral lands. Hindu caste groups, however, are scattered in all parts of Nepal.

Box. 1. Indigenous Peoples recognized by the Government of Nepal

**(A) Mountain:** (1) Bara Gaunle, (2) Bhutia, (3) Byansi, (4) Chhaintan, (5) Dolpo, (6) Larke, (7) Lhomi (Shingsawa), (8) Lhopa, (9) Marphali Thakali, (10) Mugali, (11) Siyar, (12) Tangbe, (13) Thakali, (14) Thudam, (15) Tingaunle Thakali, (16) Topkegola, (17) Sherpa, and (18) Wallung.

**(B) The Hill:** (1) Bankaria, (2) Baramo, (3) Bhujel/Gharti, (4) Chepang, (5) Chhantyal, (6) Dura, (7) Fri, (8) Gurung, (9) Hayu, (10) Hyolmo, (11) Jirel, (12) Kushbadiya, (13) Kusunda, (14) Lepcha, (15) Limbu, (16) Magar, (17) Newar, (18) Parí, (19) Rai, (20) Sunuwar, (21) Surel, (22) Tamang, (23) Thami, and (24) Yakkha.

**(C) Inner Terai:** (1) Bote, (2) Danuwar, (3) Darai, (4) Kumal, (5) Majhi, (6) Raji, and (7) Raute.

**(D) Terai:** (1) Dhanuk (Rajbanshi), (2) Dhimal, (3) Gangai, (4) Jhangad, (5) Kisan, (6) Meche, (7) Rajbanshi (Koch), (8) Satar/Santhali, (9) Tajpuria, and (10) Tharu.

The Nepal Federation of Indigenous Nationalities (NEFIN) has categorized these 59 indigenous peoples into five groups based on developmental indicators (e.g. literacy and education, income, wealth, land holding, and other assets) (see Box 2).

Box. 2. The NEFIN's categories of developmental stages of indigenous peoples

**(1) Endangered Group:** Kusunda; Bankariya; Raute; Surel; Hayu; Raji; Kisan; Lepcha; Meche; and Kushbadiya;

**(2) Highly Marginalized Group:** Majhi; Siyar; Lohmi; Thudam; Dhanuk; Chepang; Satar (Santhal); Jhangad; Thami; Bote; Danuwar; and Baramu;

**(3) Marginalized Group:** Sunuwar; Tharu; Tamang; Bhujel; Kumal; Rajbanshi; Gangai; Dhimal; Bhote; Darai; Tajpuria; Pahari; Topkegola; Dolpo; Free; Mugali; Larke; Lhopa; Dura; and Walung;

**(4) Disadvantaged Group:** Chhaintan; Tangbe; Tingaunle Thakali; Bargaule; Marphali Thakali; Gurung; Magar; Rai; Limbu; Sherpa; Yakkha; Chhantyal; Jirel; Byansi; and Yolmo;

**(5) Advanced Group:** Newar; and Thakali.

However, if we regroup the indigenous peoples based on indicators related to their identities, such as mother tongue, control over ancestral lands, traditional religious practices, and customary laws, the advanced groups are on the verge of extinction of their distinct identity, whereas some disadvantaged groups have managed to continue their indigenous identity intact and others are losing it to some extent because of the influence from the dominant groups.

### **1.5. Ethno-linguistic groupings**

There are four language families (Indo-Aryan, Tibeto-Burman, Dravid, and ProtoAustraloid) and more than 125 languages and dialects spoken in Nepal, most of which belong to indigenous peoples. The Rai indigenous peoples have about 40 languages. These languages are in five stages: (i) languages with writing culture; (ii) writing culture-oriented languages; (iii) endangered languages; (iv) languages on the verge of extinction; and (v) extinct languages. Kusunda is one of the languages that is on the verge of extinction (Kainla et al. 1994). The linguists did hard work to collect a glossary and dictionary and develop the grammar of this language. They discovered that the Kusunda language is so unique that it does not fall under any known language families. The imposition of the Khas Nepali language as the only official language, the lingua franca of Nepal, and the language of educational instruction has resulted in illiteracy, low levels of education, and deprivation of information. Consequences are evident, such as a lack of representation in decision-making positions in civil service and leadership. Because of the imposition of the Khas Nepali language as the only language for education (including literacy and basic and primary education), most of the indigenous peoples are either illiterate or have less education. The lowest literacy rate among the indigenous peoples is among the Chepangs (14 percent), while the Marwadi is the highest with 88 percent (see Table A-1 in the annexes).

### **1.6. Location of indigenous peoples**

The location of the main indigenous peoples varies depending on their ancestral lands. The Limbus, known as the Yakhumba, are indigenous peoples of the eastern Hills of Nepal bordering India. Their ancestral land is called Limbuwan, which is in the Taplejung, Panthar, and Terathum districts in the eastern part of Nepal. The Rais, known as the Khumbu, are indigenous peoples located in the eastern Hills of Nepal. Their ancestral land is Khumbuwan, which is in the Dhankutta, Sankhuwasahba, Bhojpur, Khotang, and Solukhumbu districts in the eastern part of Nepal. The Rais speak more than 40 mother tongues and each of these linguistic groups identifies themselves as separate indigenous peoples such as, inter alia, Kulung, Thulung, Chamling, Bantawa, Koyu, Bahing, and Loharung.

The Tamangs, also known as the Murmi, are indigenous peoples located around the Kathmandu Valley. Their ancestral land is Tamsaling and it is in the Sindhulli, Kabhre, Sindhupalchok, Rasuwa, Nuwakot, Dhading, and Makawanpur districts. The Newars are indigenous peoples located in the Kathmandu Valley. Their ancestral land is Nepa: Mandala and it is mainly in Kathmandu, Lalitpur and Bhaktapur districts. The Gurungs, known as the Tamu, are indigenous peoples located in the western Hills of Nepal. Their ancestral land is the Tamuwani, which is in the Lamjung, Kaski, Gorkha, and Tanahu districts in western Nepal. The Magars are indigenous

peoples located in mid-western and western Nepal. Their ancestral land is the Magrat, which is in the Tanahun, Myagdi, Palpa, Baglung, and Nawalparasi in Pyutan and Rolpa districts in the western and mid-western parts of Nepal. The Sherpas are indigenous peoples located at the lap of Chomolungma ("Sagarmatha" or Mt. Everest") in the mountain region of central Nepal. Their ancestral land is in Solokhumbu district in the central part of Nepal. The Thakalis are indigenous peoples located in the trans-Himalayan region of western Nepal. Their ancestral land is the Thasang, which is in the Mustang district in western Nepal. The Tharus are indigenous peoples of the southern plains of Nepal. Their ancestral land is the Tahruhat or Tharuwan in the Terai region of Nepal with a heavy concentration in the Dang district in mid-western Nepal, Kailali and Bardiya in western Nepal, and Sunsari in the eastern part of Nepal. The Rautes are the only nomads located on the far- and mid-western Hill and Terai of Nepal.

Table 2: First, second and third most populated districts for each of the 59 indigenous peoples (Census of 2011).

| <b>Indigenous nationalities</b> | <b>First most populated districts</b>                                   | <b>Second most populated districts</b>                                   | <b>Third most populated districts</b>                                 | <b>Major concentration</b> |
|---------------------------------|---|--|---|----------------------------|
| 1. Magar                        | Tanahun, Myagdi, Palpa, Baglung, Nawalparasi, Pyutan, Rolpa             | Saptari, Syangja, Rukum, Salyan, Surkhet                                 | Udayapur, Sindhuli, Mustang, Parbat, Gulmi, Dang, Rolpa, Arghakhanchi |                            |
| 2. Tharu                        | Sunsari, Dang, Bardiya, Kailali   | Bara, Parsa, Chitwan, Rupandehi, Kapilbastu, Banke, Saptari, Kanchanpur, | Morang, Nawalparas  |                            |
| 3. Tamang                       | Sindhulli, Kabhre, Sindhupalchok, Rasuwa, Nuwakot, Dhading, Makawanppur | Ramechhap, Dolakha   | Sankhuwsabha , Bhoijppur, Manang                                      |                            |
| 4. Newar                        | Kathmandu, Lalitpur, Bhaktapur  | -  | Ramechhap, Sindhuli   |                            |



|              |  |  |                  |  |
|--------------|--|--|------------------|--|
| 5. Rai       | Ilam, Dhankutta,<br>Sankhuwasahba,<br>Bhojpur,<br>Khotang<br>Solukhumbu, | Panchthar,<br>Okhaldhunga,<br>Udayapur | -                |  |
| 6. Gurung    | Gorkha,<br>Lamjung,<br>Manang,<br>Mustang                                | Kaski, Dolpa                           | Rasuwa, Tanahu   |  |
| 7. Limbu     | Taplejung,<br>Panchthar,<br>Terathum                                     | -                                      | Iilam, Dhankutta |  |
| 8. Dhanuk    | -  | -                                      | -                | Saptari, Siraha,<br>Dhanusa,<br>Mahottati                        |
| 9. Sherpa    | -  | Solukhumbu,<br>Manang                  | Humla            | Kathmandu,<br>Solukhumbu,<br>Sindhupalchowk.                     |
| 10. Bhujel   | -  | -                                      | Jhapa            | Morang,<br>Terathum  |
| 11. Kumal    | -  | -                                      | -                | Nawalparashi,<br>Gorkha,<br>Chitawan, Gulmi,<br>Tanahun, Dang    |
| 12. Rajbansi | -  | -                                      | -                | Jhapa, Morang,<br>Sunsar   |
| 13. Sunuwar  | -  | -                                      | -                | Dhanusa,<br>Ramechhap,<br>Bara, Mahottari,<br>Sindhuli           |
| 14. Majhi    | -  | -                                      | -                | Morang,<br>Sindhuli,<br>Ramechhap,<br>Sarlahi,<br>Sindhupalchowk |
| 15. Danuwar  |  |  |                  | Sindhuli,<br>Udayapur, Siraha                                    |

|                        |  |  |  |  |
|------------------------|--|--|--|--|
| 16. Chepang            |  |  |  | Chittawan,<br>Makawanpur,<br>Dhading, Gorkha |
| 17. Satar/Santhal      |  |  |  | Jhapa, Morang,<br>Dhanusa                    |
| 18.<br>Jhangar/Dhangar |  |  |  | Sunsari, Jhapa,<br>Morang,                   |
| 19. Ganagai            |  |  |  | Jhapa, morang                                |
| 20. Thami              |  |  |  | Dolakha,<br>Ramechhap,<br>Sindhupalchowk     |
| 21. Dhimal             |  |  |  | Jhapa, Morang                                |
| 22. Bhote              |  |  |  | Sanmhuwashabha                               |
| 23. Yakkha             |  |  |  | Sankhuwashabha,<br>Morang,<br>Dhankuta, Ilam |
| 24. Darai              |  |  |  | Chitawan,<br>Tanahun,<br>Nawalparasi         |
| 25. Tajpuriya          |  |  |  | Jhapa, Morang                                |
| 26. Thakali            |  |  |  | Mustang, Kask                                |
| 27. Pahari             |  |  |  | Kathmandu,<br>Myagdi,<br>Rupandehi           |
| 28. Chhanyal           |  |  |  | Myagdi,<br>Baglung, Gulmi                    |
| 29. Bote               |  |  |  | Chitawan,<br>Tanahun,<br>Nawalparasi         |
| 30. Baramu             |  |  |  | Gorkha, Dhading                              |
| 31. Jirel              |  |  |  | Daolakha                                     |
| 32. Dura               |  |  |  | Lamjung                                      |
| 33. Meche              |  |  |  | Jhapa, Sunsari                               |

|                                 |  |  |  |  |
|---------------------------------|--|--|--|--|
| 34. Lepcha                      |  |  |  | Iilam                                      |
| 35. Kisan                       |  |  |  | Jhapa                                      |
| 36. Raji                        |  |  |  | Surkeht,<br>Baridiya, Kailali              |
| 37. Byasi                       |  |  |  | Darchula                                   |
| 39. Walung                      |  |  |  | Taplejung,<br>Morang,<br>Kathmandu         |
| 40. Raute                       |  |  |  | Dandeldhura,<br>Doti, Surkhet,<br>Jajarkot |
| 41. Hyolmo                      |  |  |  | Iilam, Kathmandu,<br>Sindhupalchok         |
| 42. Kusbadiya<br>(Pattharkatta) |  |  |  | Kapilwastu, Bank                           |
| 43. Kusunda                     |  |  |  | Pyuthan,<br>Dang, Tanahun                  |

Note: Census data for 2021 with caste and ethnic breakdown is not yet available.

### 1.7. Economic situation

All indigenous peoples have lost the ownership and control over their ancestral lands by the 1960s because of the State's predatory land policies, such as Birta (the rulers gave ownership of land to individual Bahuns) and Jagir (land given in lieu of salary) and of the abolition of Kipat (communal/collective land ownership) land tenure system (Regmi 1977; 1978).

The economic situations of indigenous peoples vary enormously – from the Rautes who still make their livelihood through hunting and gathering, to the Newars and the Thakalis who are well advanced in commercial and industrial activities. Indigenous peoples have been adopting either one or more strategies for their livelihood, including foraging, horticulture, agriculture, and industrial activities. According to a report prepared by the Institute for Integrated Development Studies (IIDS- 2002), there are seven strategies pursued by the indigenous peoples of Nepal. These are (a) nomads. The Rautes are the only nomads of Nepal who are still committed to continuing their traditional nomadic lifestyle in the forests of far-western and mid-western provinces. They are facing hardship in continuing their traditional way of life because forests are owned and/or controlled and/or managed by the Government, community, and non-indigenous individuals. Some of the Rautes have already been settled by the Government and the remaining ones continue to refuse the suggestions of the Government and non-governmental organizations (NGOs) to settle

down. (b) foraging and horticulture. The indigenous peoples mainly Bankaria, Chepang, and Kusunda rely mainly on foraging for their livelihood. (c) foraging, horticulture, and agriculture. Three indigenous peoples (i.e. Hayu, Raji, and Thami ) rely on foraging, horticulture, and agriculture for their livelihood. (d) horticulture and agriculture. Fourteen indigenous peoples (i.e. Baramo, Bhujel, Chantyal, Dura, Free, Limbu, Lapcha, Magar, Pahari, Rai, Sunuwar, Surel, Tamang, and Yakkha) rely on both horticulture and agriculture for their livelihood. (e) pastoralism, agriculture, and industrial activities. Ten indigenous peoples (i.e. Bara Gaunle Thakali, Byansi, Chairotan, Gurung, Jirel, Larke, Siyar, Tangbe, Thakali and Tin Gaunle, ) rely on pastoral, agricultural and industrial activities for their livelihood. (f) agriculture. Fifteen indigenous peoples (i.e. Bote, Majhi, Danuwar, Darai, Dhanuk, Dhimal, Gangai, Jhangad, Kisan, Kumal, Meche, Rajbanshi, Santhal, Tajpuria, Tharu, (Rajbanshi)) rely only on agriculture for their livelihood. (g) agriculture and industrial activities. Three indigenous peoples (i.e. Marphalis Thakali, Newar, and Thakali) rely partly on agriculture and mainly on industrial activities for their livelihood.

### **1.8. Characteristics of indigenous peoples**

Indigenous peoples are at different stages in continuing or maintaining their social and political structure (see Table A3 in the Annexes). Indigenous peoples of the Hills and the Terai regions, including Inner Terai, have lost their traditional political system and many parts and aspects of the traditional social structure. For example, the Tharus and other indigenous peoples of the Terai lost control over their ancestral land after the eradication of malaria in the early 1950s and lost their traditional social and political structure with the introduction of the autocratic partyless Panchayat system in 1960. That system had a mission of "One King, One Country, One Language, One Dress", which was a project of homogenization of social and political structures by the dominant caste group. Also, the Limbus of the eastern Hills of Nepal are the last indigenous peoples to lose the Kipat or the indigenous land tenure system.

The Rautes, the last nomads of Nepal, still control their way of life but have lost control over the forest that they have been living in for centuries. They keep moving from one place to another and making their living by hunting, gathering, and bartering their handcrafted wooden products for food grains in nearby villages.

On the other hand, many indigenous peoples who live in the mountain regions have been almost untouched by the external social and political structure. While in the past, imposition of the national social and political structure – which is based on monarchy and Hindu religion, culture, and society – has destroyed the social and political structures for many indigenous peoples of the Hills and the Terai, these structures continue for about 18 indigenous peoples of the mountain areas. For example, the Marphali Thakali, Tin Gaunle Thakali, Bara Gaunle, and Loba of the Mustang district, which is a trans-Himalayan region, still have full ownership and control over their ancestral land, and their own traditional political, judiciary, social and cultural systems. The Mustang district police chief and officers pay fines to the local community when they fail to attend their meetings. The local body of the Nepal Government can do nothing without consulting with and getting the consent of these communities.

The ancestral territories of each of the 59 indigenous peoples recognized by the Government, and others yet to be recognized, are densely populated.

Many indigenous peoples have faith in animism, some in Bon, some have Kirat religion, and many follow Buddhism. The Hindu religion and culture have long influenced some indigenous peoples, and in the last few decades, Christianity has also been expanding among them.

## 2. Poverty among indigenous peoples

According to the Human Development Report 2011, Nepal ranks 157<sup>th</sup> out of the 187 countries in the world on the Human Development Index.

During 2000–2007, 55.1 percent of the population lived below the poverty line with an income of US\$1.25 per day, and 77.6 percent had an income of less than US\$2 per day. During 2000–2006, the national poverty incidence was 30.1 percent (UNDP 2009: 178).

The following table shows the multidimensional poverty rate (MPI)<sup>1</sup> for Nepal and its two components: incidence of poverty (H) and average intensity of deprivation faced by the poor(A).

Table 3 Nepal's MPI for 2011

| <b>Multidimensional Poverty Index (MPI = H×A)</b> | <b>Incidence of Poverty (H)</b> | <b>Average Intensity Across the Poor (A)</b> | <b>Percentage of Population Vulnerable to Poverty</b> | <b>Percentage of Population in Severe Poverty</b> |
|---|---------------------------------|--|---|---|
| 0.350   | 64.7%                           | 54.0%  | 13.6%   | 37.1%   |

Source: Country Briefing: Nepal. Multidimensional Poverty Index (MPI) At a Glance, Oxford Poverty and Human Development Initiative

There is indeed a wide gap between rich and poor among the Bahun-Chhetri and indigenous peoples (except for the Newars) and also within groups of indigenous peoples from the Newars to the Limbus. Indigenous peoples have both the highest and the lowest proportion below the poverty line, as shown in the Nepal Human Development Report 2009: poverty characterized a lower proportion of Newars and Brahman/Chhetri (14% and 18% respectively) than of Dalits, Muslims and Hill Janajatis, whose rates hover between 41% and 46%, significantly higher than the national average of 31 percent<sup>2</sup>. The Newars are exceptional because they are highly urbanized and concentrated in the capital city (Kathmandu) and other town areas outside the Kathmandu Valley. Because they are engaged in trading activities, their human development index is quite

<sup>1</sup> The MPI reflects both the incidence or headcount ratio (H) of poverty – the proportion of the population that is multi dimensionally poor – and the average intensity (A) of their poverty – the average proportion of indicators in which poor people are deprived. The MPI is calculated by multiplying the incidence of poverty by the average intensity across the poor (H\*A). Source: Oxford Poverty and Human Development Initiative (OPHI) —Country Briefing: Nepal. Multidimensional Poverty Index (MPI) At a Glance, constructed by OPHI for UNDP's 2011 Human Development Report (<http://hdr.undp.org/en/>) [www.ophi.org.uk](http://www.ophi.org.uk) Page 1.

<sup>2</sup> Nepal HDR 2009 —State Transformation and Human Development, UNDP

high. On the other extreme, the Limbus, who lost their traditional land tenure system in the 1960s, rely mostly on farming and, to some extent, on the army, and are the poorest of the poor.

As for the Human Development Index, the national one for 2011 is 0.458. Madhesi Brahman and Chhetri, Newar, and Hill Brahman have a higher HDI value (0.6 and above)—than that of Dalits and Janajatis, both from the Hills and the Tarai. Muslims have an index value of 0.401 - lower than that for Dalits as a whole, but higher than Madhesi Dalits<sup>3</sup>.

According to the Nepal Living Standard Survey 2003/04, the poverty rate amounts to 30.9 percent, and for indigenous peoples, the rate is 35.1 percent, compared with 18.4 percent for the "high castes" including 18.8 for the Hill Bahun (Brahman) and Chhetris (see Table 4; also see Table A-3 in the annex).

Table 4: Nominal per capita consumption and incidence of poverty

| S.N.  | Caste/ethnic group        | Per capita    | Headcount (percent) |             |              |
|-------|---------------------------|---------------|---------------------|-------------|--------------|
|       |                           |               | Poor                | Non-poor    | Total        |
| 1.0   | <b>Higher caste</b>       | <b>19,198</b> | <b>18.4</b>         | <b>81.7</b> | <b>100.0</b> |
| 1.1   | Hill Brahmin/Chhetri      | 19,812        | 18.8                | 81.2        | 100.0        |
| 1.2   | Tarai Brahmin etc.        | 21,625        | 11.2                | 88.8        | 100.0        |
| 2.0   | <b>Tarai middle caste</b> | <b>10,758</b> | <b>26.5</b>         | <b>73.5</b> | <b>100.0</b> |
| 3.0   | <b>Janajati (IPs)</b>     | <b>16,942</b> | <b>35.1</b>         | <b>64.9</b> | <b>100.0</b> |
| 3.1   | Hill Janajati (IPs)       | 19,258        | 35.7                | 64.3        | 100.0        |
| 3.1.1 | Newar/Thakali             | 38,419        | 13.9                | 86.1        | 100.0        |
| 3.1.2 | Other Hill Janajati (IPs) | 12,764        | 43.0                | 57.0        | 100.0        |
| 3.2   | Tarai Janajati (IPs)      | 10,412        | 33.4                | 66.6        | 100.0        |
| 4.0   | <b>Dalit</b>              | <b>9,905</b>  | <b>46.4</b>         | <b>53.6</b> | <b>100.0</b> |
| 4.1   | Hill Dalit                | 11,089        | 44.9                | 55.1        | 100.0        |
| 4.2   | Tarai Dalit               | 7,604         | 49.2                | 50.9        | 100.0        |
| 5.0   | <b>Muslim</b>             | <b>9,061</b>  | <b>41.3</b>         | <b>58.7</b> | <b>100.0</b> |
| 6.0   | <b>Others</b>             | <b>13,890</b> | <b>47.7</b>         | <b>52.3</b> | <b>100.0</b> |
|       | <b>Total</b>              | <b>15,848</b> | <b>30.9</b>         | <b>69.2</b> | <b>100.0</b> |

Source: CBS, Nepal Living Standard Survey 2003/04; See Table 10.5 in NIRSS 2006:63.

Although Nepal is a poor country by such modern indicators (including per capita income), it is indeed rich in biodiversity and social-cultural diversity. Because Nepal heavily relies on foreign aid for its development activities, the World Bank and other multilateral and bilateral donors have

<sup>3</sup> <http://hdrstats.undp.org/en/countries/profiles/NPL.html>

been helping to achieve poverty reduction goals and targets in Nepal. The five-year Tenth Plan (2002-2007) was also the Poverty Reduction Strategy Paper (PRSP) of the Nepal Government. It emphasized four pillars: (i) high, sustainable and broad-based economic growth, (ii) social sector and rural infrastructure development, (iii) social inclusion and targeted programmes for the poor, vulnerable and deprived groups, and (iv) good governance (NPC 2003). The positive aspect was that it had a separate plan for indigenous peoples for social inclusion; however, it included ineffective implementation of the strategy, inadequate provisions for indigenous peoples and a silo approach as indigenous peoples' concerns were not addressed in all sectors. Also, during the preparation of the plan, indigenous peoples were not consulted, and their participation in decision-making at all levels was not ensured (Bhattachan and Webster 2005). According to Bhattachan and Webster (2005:12), "...the causes of the comparatively high poverty levels of certain groups of indigenous peoples in Nepal are predominantly structural in nature and include dispossession of land, forest and other natural resources, non-recognition of traditional land-use patterns and land tenure arrangements, discrimination in political, cultural and economic spheres, non-recognition of their mother-tongue languages, customary law, institutions, and collective rights". The main challenges to overcome the poverty of indigenous peoples include: eliminating the centralization of power and authority; the hegemony of power and authority by a specific caste group (Bahun-Chhetris), sex group (male), language group (Khas Nepali), and regional group (the Hill); mainstreaming gender and other groups with no respect for caste/ethnic, linguistic, cultural, religious and regional diversity; inadequate targeted programmes for the development of indigenous peoples and other marginalized groups/communities; and non-implementation of ILO Convention 169 and UN Declaration of the Rights of Indigenous Peoples (UNDRIP). The indigenous peoples' movement has its perspectives on poverty reduction and elimination of all forms of discrimination against indigenous peoples. These are federal democratic republic; ethnic, linguistic, and regional autonomy with the right to self-determination, ownership, and control over ancestral lands, including natural resources; and education in mother tongues. The indigenous peoples' movement demands that all power and authority, except for national security, currency, and international relations, be with the autonomous and self-governed states. At this historic juncture, there is an opportunity to ensure these rights in the new constitution, which is now in the process of being drafted by the Constituent Assembly, in which 218 out of the 601 members belong to indigenous peoples.

### **3. National Legislation on Indigenous Peoples**

#### **Recognition of Indigenous Peoples**

##### **Legal Personality and Identity**

Indigenous Peoples and *Tharus* are stipulated in the Constitution of Nepal. Indigenous Peoples (Adivasi/Janajati) are legally defined under the NFDIN Act, 2002, which recognizes distinct cultural identity, distinct social structure along with having own mother tongue and written and

unwritten history.<sup>4</sup> A total of 59 Adivasi/ Janajatis are enlisted <sup>5</sup>and some groups qualified as indigenous peoples based on the definition of the NFDIN Act are yet to be enlisted.

The constitution of Nepal, 2015 (Hereinafter the constitution) talks to end all forms of racial discrimination and discrimination based on ethnicity, and language; to ensure social justice and build an egalitarian based on proportional inclusion and participatory principle<sup>6</sup>. Nepal is declared a multicultural<sup>7</sup> and secular nation<sup>8</sup>. The state can introduce special provisions as per law for the protection, empowerment, or development of indigenous nationalities, Tharus, minorities, marginalized, and other oppressed groups <sup>9</sup>. The preamble of the constitution of Nepal internalizes people's sovereignty and right to autonomy and self-rule. Categorically, the Constitution encompasses general and specific provisions relating to Indigenous Peoples, the general provisions are in line with substantive equality viz. special measures, inclusion or quota to political seats, and government services. Despite the facts, indigenous peoples were systematically excluded indigenous peoples in the constitution-making process by denial of the formulation of the Indigenous caucus with the Constituent Assembly and disregarding the right the free prior informed consent (FPIC) enshrined under article 6 of the ILO Convention No.169, article 18, and 19 of the UNDRIP and article 5 (c) of CERD and the GR 23rd that Nepal is a party to. The Special Rapporteur on the Rights of Indigenous Peoples (SRIP) recommended achieving agreement and consent with indigenous peoples in the constitution (A/HRC/12/34/Add.3-2009) and the CERD wrote Early Warning letters to ensure Indigenous Peoples' effective participation in the constitution-writing process and no decisions directly relating to their rights and interests taken without their informed consent (TS/JF 2009, CERD/EWUAP, 2012) and the CERD consistently made follow up (CERD/DH/mja/vdt 2013). The exclusion in the process resulted from adverse consequences to incorporating the interests and rights of indigenous peoples in the contents of the constitution. A study carried out by LAHURNIP reveals that 11 provisions of the constitution are against; 23 provisions are discriminatory; 49 provisions are exclusionary to indigenous peoples, and 5 provisions institutional racial supremacy of Khas Arya, the dominant section in the nation<sup>10</sup>.

## **State's Institutions for Indigenous Peoples**

### **National Foundation for the Development of Indigenous Nationalities**

There are mainly three Institutions mandated to work on Indigenous Peoples' development and taking care of rights: Adivasi Janajati Uttthan Rashtriya Pratisthan (National Foundation for Development of Indigenous Nationalities, NFDIN-2002) enactment of this Act intends to work through the foundation for the upliftment of indigenous peoples for their social, economic and

---

<sup>4</sup> Sec. 2 of the NFDIN Act, 2002

<sup>5</sup> Schedule of *ibid.*

<sup>6</sup> Para.4 of the preamble of the Constitution of Nepal, 2015

<sup>7</sup> Article 3 *ibid.*

<sup>8</sup> Article 4 *ibid.*

<sup>9</sup> Proviso of the article 18 (3) *ibid.*

<sup>10</sup> A Study and Analysis of the "Constitution of Nepal, 2015" in the context of Indigenous Peoples Rights, LAHURNIP, P.B , 2016



cultural development and upliftment and their equal participation in the mainstream of national development<sup>11</sup> (Hereinafter referred to as NFDIN Act). The NFDIN Act recognizes and defines<sup>12</sup> *inter alia* enlists 59 groups as Adivasi Janajati(AJ), but many self-identified groups have been demanding their enlistment within the Act. Among others, the functions, duties, and rights of the Foundation cover a wide range of areas, including the formulation and implementation of programmes necessary for the promotion and preservation of the language, script, literature, history, arts, culture, traditional skills, and technology,<sup>13</sup> carry out research, study, investigation, and develop language, script, literature, history, arts, tradition, and culture<sup>14</sup>, conduct or cause to be conducted special programmes to enhance the economic and social status of the poor and backwarded groups within Adivasi/Janajati.<sup>15</sup> The Act authorizes NFDIN to obtain funds as loans or assistance from a foreign government or international organizations to dispatch its mandate to develop and advancement of Indigenous peoples.<sup>16</sup>

### **National Indigenous Nationalities Commission**

National Indigenous Nationalities Commission (NINC) Act, 2017 was enacted under article 296 (1), establishing the National Indigenous Nationality Commission (hereinafter the Commission) with the mandate of protecting and promoting rights and interests and the empowerment of the communities<sup>17</sup>. The NINC Act incorporates 19 - points as the power, functions, and duties of the Commission, particularly making recommendations and suggestions to the Government of Nepal relating to reform of the policies, laws, and institutions relating to IPs<sup>18</sup>; to formulate policy and programme for the promotion and protection of the rights and interests of the Indigenous Nationalities<sup>19</sup>; formulate special programmes for the development and empowerment of economically or socially indigent people within the indigenous nationalities<sup>20</sup>; monitor the implementation of the international treaties relating to the Indigenous Peoples that Nepal is a party to<sup>21</sup>. Similarly, the commission has the mandate to protect, and promote the traditional skill, technology, and special knowledge existing within the indigenous nationalities communities and to assist in its application for commercial use<sup>22</sup>. The commission dispatches its functions with coordination and cooperation based on the necessity with government agencies or public entities.<sup>23</sup>

### **Tharu Commission**

---

<sup>11</sup> Preamble of the

<sup>12</sup> The section 2 of the NFDIA Act defines " Aadibasi/Janajati" means a tribe or community as mentioned in the Schedule having its own mother language and traditional rites and customs, distinct cultural identity, distinct social structure and written or unwritten history.

<sup>13</sup> Sec. 6.a of the NFDIN Act.

<sup>14</sup> Sec. 6.b of the NFDIN Act.

<sup>15</sup> Sec. 6 (j) of NFDIN Act, 2002

<sup>16</sup> Sec. 16 of the NFDIN Act, 2002

<sup>17</sup> Preamble of the NINC Act, 2017

<sup>18</sup> Sec. 7.a of the NINC Act, 2017

<sup>19</sup> Ibid. 7.b

<sup>20</sup> Ibid. 7.g

<sup>21</sup> Ibid.7.l

<sup>22</sup> Ibid.7.k

<sup>23</sup> Ibid. Sec. 11

Tharu Commission Act, 2017 established the Tharu Commission (TC) with the specific objective of identifying the history and culture of the Tharu community and protecting and promoting the rights and interests and empowering the community. Altogether 19 functions, powers, and duties are provided by the Act to the TC, mainly to recommend and make the suggestion to the government agencies for institutional, legal, and policy reform to protect and promote the rights of the Tharu community<sup>24</sup>. TC has the function to formulate special programmes for the development of indigent people within the Tharu community<sup>25</sup>. Similarly, the TC has the function and duty to protect and promote the traditional skill, technology, and special knowledge existing within the Tharu community and to assist in its application for commercial use<sup>26</sup>. The TC receives complaints of violation the rights of the Tharu community and recommends concerned agency conduct an investigation and prosecution over such complaints<sup>27</sup>. The TC may, based on necessity, coordinate and cooperate with government agencies or public entities<sup>28</sup>.

## **Indigenous Peoples' Related Constitutional Provisions**

### **A Basic Feature of the Constitution [Inclusion]**

Maoist-led ten-year armed conflict that ended with the Comprehensive Peace Accord (CPA) 2006 between the State and Maoist Party, which identified the historical injustices such as colonization under the Hindu Castes system, subjugation, exclusion, marginalization, and discrimination against Indigenous Peoples and other subjugated groups based on the identity and other social, cultural, economic, political aspects. Through the CPA, the State and Maoist Party committed to the progressive restructuring of the state to end all kinds of discrimination,<sup>29</sup> later it was institutionalized under the Interim Constitution, 2007.

The Interim Constitution encompassed a provision to ensure inclusion and restructured the state into a progressive, inclusive, democratic federal system.<sup>30</sup> It further accepted the aspirations of indigenous peoples for autonomous provinces with full rights.<sup>31</sup> This provision is a reflection of the CPA, between the state, and the then Communist Party Maoist by ending a ten-year armed conflict. It was agreed to carry out an inclusive, democratic, and progressive restructuring of the State by eliminating the centralized and unitary form of the State to address the problems of indigenous peoples and other marginalized groups to end discrimination based on class, caste, language, gender, cultures, religion, and region.<sup>32</sup> That means the aspiration of Indigenous Peoples for restructuring the state has a significant meaning for the peace process and social justice in Nepal. The State Restructure Committee of the Constituent Assembly recommended seven

---

<sup>24</sup> Sec. 7 .d of the Tharu Commission Act, 2017

<sup>25</sup> Sec. 7.g ibid.

<sup>26</sup> Sec. 7.k ibid.

<sup>27</sup> Sec.7. m ibid.

<sup>28</sup> Sec. 11 ibid.

<sup>29</sup> 3.5 of CPA, 26/11/2006

<sup>30</sup> Article 138 (1) of the Interim Constitution, 2007

<sup>31</sup> Ibid. (1A)

<sup>32</sup> 3.5 points of the Comprehensive Peace Accord , 2006

provinces based on identity and four territorial-based provinces.<sup>33</sup> The Committee recommended 22 autonomous regions for the numerical small Indigenous Peoples.

Among others one of the basic features of the Constitution, 2015 is proportional inclusion<sup>34</sup> which is institutionalized under article 4 of the Constitution. Based on the principle of proportional inclusion, the right to participation in every state body is a fundamental right under article 42 of the Constitution.<sup>35</sup>

### **Inclusion in Constitutional Organs and bodies**

Appointments to offices of Constitutional Organs and Bodies shall be made in accordance with the inclusive principle.<sup>36</sup> In the case of Santosh Basnet vs. Prime Minister, the Supreme Court laid a precedent on the rationality of the inclusion that says some sections are always in backwarded due to the geographical structure, it is a fact that the backwardness of those regions always eschewed deceitfully in the development process and it cannot be denied. Thus, pronouncing a commitment for the overall upliftment of women, indigenous peoples, Madhesis, Dalits, Disabled and Backward sections in the law of the land (constitution) and ensuring bylaws and programs according to the constitution cannot be considered an unnecessary matter<sup>37</sup>.

### **Inclusion in the Existing Laws**

#### **Good Governance (Management and Operation) Act, 2008**

Inclusion is an important element of good governance and is made mandatory under the Good Governance (Management and Operation) Act, 2008. According to this and other prevailing laws, any concerned authority is required to carry out its functions of administration based on the greater interest of the nation and people, equity and inclusiveness, popular participation, access of people to administration, and its decision, a guarantee of human rights, rule of law.<sup>38</sup> Nepal government shall pursue a policy of social justice, uplifting ethnic groups.<sup>39</sup>

#### **Local Governance Operation Act, 2018**

Among others, the local governments (Rural Municipalities and Municipalities) shall pay attention to social inclusion in the formulation of their Plans and Implementation in accordance with sec. 24 (1) of the Local Governance Operation Act, 2018. The concerning prevailing laws, place a clear obligation on the three levels of government (Federal, State, and Local) to incorporate the policy of Proportional Inclusion while dispatching their respective functions that include, decision making, formulation of laws, plans, policies, programmes, and their implementation as well as in the monitoring processes. Meaning to say, that Proportional Inclusion is the core value in the

---

<sup>33</sup> [https://www.bbc.com/nepali/news/2012/01/120131\\_state\\_restructuring](https://www.bbc.com/nepali/news/2012/01/120131_state_restructuring) visited 28 February 2022

<sup>34</sup> Preamble of the Constitution of Nepal, 2015

<sup>35</sup> Article 42, of Constitution of Nepal, 2015

<sup>36</sup> Article 283 of the Constitution of Nepal, 2015

<sup>37</sup> Nepal Kanoon Patrika, 2068 volume 2, D.N. 8554 P. 4795

<sup>38</sup> Good Governance (Management and Operation) Act, 2008 Sec. 6

<sup>39</sup> Ibid. Sec. 7(1)(g)

development and decision-making process of the government in which Indigenous Peoples are recognized as one of the key legal entities among other groups in Nepal.

### **Customary Institutions and Cultural Rights**

Constitution enshrines the fundamental rights to protect and promote culture, cultural civilization, and heritages towards each community of Nepal.<sup>40</sup> As a community, Indigenous Peoples can enjoy these rights to protect their cultural rights, customs, customary rights, institution, and heritages.

### **Participation in decision-making in the constitution**

The Constitution of Nepal, 2015 has a specific directive principle for social justice and inclusion, relating to the rights of Indigenous Peoples.<sup>41</sup> According to the principle, the right to participation in the decision-making concerning matters is a tool to ensure Indigenous Peoples' right to live with dignity along with identity. In order to ensure these rights, the state shall peruse a special provision for the opportunity and benefit *vis a vis ensure* participation of respective peoples in the decision-making concerning them. Further, the State pursues a policy to protect and promote traditional knowledge, skills, cultures, social tradition, and experiences of Indigenous Peoples and local communities. The directive principle should be read harmoniously along with article 16 of the constitution, relating to the fundamental right to live with dignity, article 42, relating to the right to social justice, and article 56 (5), relating to the Special, Protected or autonomous region for protection of social and cultural and economic development, etc. The constitution is the supreme law, and any law inconsistent with the constitution deems *ab intio* null and void to the extent of such inconsistency.<sup>42</sup>

### **Right to live with dignity along with identity**

Article 51 (j)(8) is a specific provision to ensure the right to live with dignity along with the identity of Indigenous Peoples that listed three commitments as follows:

- (1) making special provisions for opportunities and benefits;
- (2) participation in decisions concerning the community;
- (3) protection and promotion of traditional knowledge, skill, culture, social traditional knowledge, social tradition and experience of the communities.

The aforementioned provision is a government's obligation to ensure social justice and inclusion. This provision is the directive principle that cannot be challenged in case of non-compliance, but the Supreme Court laid a precedent that the directive principle is also an operative provision that needs to give effect with its implementation.

### **Right to food and food sovereignty**

A right relating to food is a fundamental right, and every citizen shall have the right to be safe from the state of being in danger of life from the scarcity of food and food sovereignty under the

---

<sup>40</sup> Article 32 of the Constitution of Nepal

<sup>41</sup> Article 51 (j) (8) of the Constitution of Nepal, 2015.

<sup>42</sup> Article 1 of the Constitution of Nepal, 2015

law.<sup>43</sup> The right to food and food sovereignty Act, 2018 (RFS) was enacted to implement the relevant constitutional provision of the Constitution, 2015. The RFS covers a wide range of policies and programs and also encompasses provisions that declare offenses and punishments to actions, such as any act committed to inflict serious harm or create a state of famine by depriving anyone of access to the essential food<sup>44</sup> subject to not exceeding 10 years of imprisonment or a fine not exceeding one million rupees.<sup>45</sup> Similarly, rendering one homeless in such a manner as to deprive him or her of the basis of livelihood is an offense subject to not exceeding 5 years of imprisonment and a fine not exceeding five hundred thousand rupees.<sup>46</sup> All levels of government (local, state, and federal) shall make and implement the targeted agricultural development programs for the protection of the rights and welfare of...indigenous farmers.<sup>47</sup> Among others, for the protection and promotion of the right to food and food sovereignty, farmers shall have the right to protect traditional and indigenous food <sup>48</sup> and right against the deprivation of agricultural occupation arbitrarily.<sup>49</sup> The RFS incorporates the concept of sustainable use of agricultural land and correspondences obligations to the federal, state, and local governments to carry out development construction works in a manner not to be contrary to the National Food Plan.<sup>50</sup> In the case of Prakashmani Sharma vs. Prime minister, et.al. (NPK 2068 issue 53, volume 1, D.N.8540, P. 3600) the Supreme Court laid a precedent on the essentiality of the right to food "The right to freedom cannot be exercised in the absence of the right to food and life without the right to food cannot be dignified life thus the right to food and right to freedom are mutually inclusive".

On its report of 11 May 2022, the BBC Nepali broadcasted that the Chepang community has been facing serious famine, while the whole nation is engaged in the local election. Overcome hunger is the priority of the election for this community. Mr. Risi Bahadur Praja from Chitawan Dinglaw says "*Gauma Chunab lageko chaina aja Bhok kai chunab cha. Bhok mare pachi balla chunab lagne ho*" Somilal Praja, from Rapti municipality-9 Kanda says "*Chunabko ranko chai chaina khaneko bhokmariko ranko chai badi rakheko cha, chunablai .. khanu bhaisakyo bhok lai gittha bhyakur khanna aturi bhai saky bhane jasto cha* " <sup>51</sup>

However, indigenous peoples, depending on agriculture have been facing displacement and forced evictions from lands, territories, and natural resources in the name of development, impacting adversely multiple areas including, economic, social, cultural, education, and overall development.

### **Right to lands territories and Natural Resources**

Before 1968, indigenous peoples' lands were legally recognized, under the existing legal system and laws relating to lands and resources, including the Land Reform Act, of 1964. The then legal system was based on the legal pluralism that recognized customary land rights (Pre-existing rights)

---

<sup>43</sup> Article 36 of the Constitution of Nepal, 2015

<sup>44</sup> Sec. 40(a) of the Right to Food and Sovereignty Act, 2018

<sup>45</sup> Sec. 42(a) *ibid.*

<sup>46</sup> Sec.42(c) *ibid.*

<sup>47</sup> Sec. 18 *ibid.*

<sup>48</sup> Sec.12(2)(e)

<sup>49</sup> Sec.12(2)(f)

<sup>50</sup> Sec. 15

(e)

<sup>51</sup> [https://www.bbc.com/nepali/bbc\\_nepali\\_radio/programmes/p0340xzv](https://www.bbc.com/nepali/bbc_nepali_radio/programmes/p0340xzv) visited 12 May, 2022

and treaty rights (Treaty between state and Limbus, 1774) over lands, territories, and natural resources. The customary lands of Limbus, called Kipat still stipulated in the definitional part of the Land Reform Act, 1964, which says " In the case of Kipat, a person who possesses such land on payment of government revenue following customs, tradition, and practices or a person, who possesses such land on making payment of revenue to such person".<sup>52</sup> There is no clear recognition or de-recognition of indigenous peoples' land rights. Indigenous peoples are struggling to have their lands recognized as per the ILO Convention No. 169, UNDRIP, customary rights (Pre-existing rights). Limbus are struggling to retain its lands, and territories as per the treaty of 1774 concluded between Limbus and the state. There is a serious problem of land dispossession and forced eviction, faced by indigenous peoples in the name of development, public interest, and being victims of fraudulent action from loopholes in laws. Article 32 (3) provides the fundamental right to protect and promote culture, cultural civilization, and heritages. It is a fact that these rights are interconnected with lands, territories, and resources, and it is almost impossible to exercise the aforementioned fundamental rights without having access and control over lands, territories resources, governed by customary laws and practice since the time of immemorial.

The Land Survey and Measurement Act, 2019 (1963) has a kind of classification of the community ownership land "*Saamudayik Jagga*" Land kept for community purpose by the respective community or any structure constructed in such type of land or lands under the ownership of a community."<sup>53</sup> Chapter 4, section 255 classifies property on the basis of ownership and use into seven categories including community property, public property, government property, and trust property. The community and trust property cover Indigenous community lands, but not exclusively. According to the definition, "any land held by a community for its use, any structure built in such land or other property owned by it shall be deemed to be the community property".<sup>54</sup>

The new set up federal structure opens a door for the community to assert their lands rights at the rural municipality level under section 1(2) (L) of the Local Government

Operation Act, 2017 provides rural municipality and Municipality jurisdiction to protect and manage records of community property. Importantly, the existing legal provisions are inadequate to respond to injustices of the land faced by indigenous peoples, and those laws are inconsistent with the indigenous peoples' rights over lands, territories, and natural resources enshrined under the ILO Convention No. 169, the UNDRIP, CERD including its GR 23rd that Nepal is a party to.

### **Implementation of International Instruments**

In the context of Indigenous Peoples' Rights: (a) specific to Indigenous Peoples, and (b) relevant to Indigenous Peoples, ILO Convention, No. 169 and UNDRIP fall under the category (a), and CERD, ICCPR, ICESCR, CRC, CBD, etc. that come under the category (b), CBD and CRC comprise specific provision to IPs. In the case of Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) vs. Prime Minister. Honorable supreme court issued a directive order against the government to reform existing laws to ensure effective participation of Indigenous Peoples in line with the international laws, including ILO Convention, No. 169,

---

<sup>52</sup> Sec.2(2a) of the Land Reform Act, 1964

<sup>53</sup> Sec.2 (f1) of the Land Survey and Management Act, 1963

<sup>54</sup> Chapter 5, Section 301 of the National Civil Code , 2017

ICCPR, ICESCR, CERD, etc.<sup>55</sup> The provision of international law is equivalent to the provision of national law. In case of inconsistency, the provision of international law prevails over national law.<sup>56</sup> The government is committed to implementing the international treaty that protects the right of indigenous peoples, which Nepal is a party.<sup>57</sup>

### **Right to Free Prior and Informed Consent (FPIC)**

Indigenous Peoples' right to free prior and informed consent (FPIC) is accepted on a principle basis in the Nepalese legal arena. There is a gap between the commitment and the implementation of the FPIC. It is a positive step to obtain FPIC from affected Indigenous peoples in some Hydro Projects, but not adequate as prescribed by article 19 of the UNDRIP. The Upper Trishuli Hydro Project introduced the Indigenous Peoples' Plan Upper Trishuli 1 Hydro project, Nepal 2018. In conservation, WWF introduced "Indigenous Peoples Planning Framework (IPPF) & Process Framework (PF)-2019, which recognizes Indigenous Peoples such as Tharu, Bote, Majhi, Danuwar, Kumal, Raji, Magar, Gurung, Tamang, Raute, Newar, Sonahas, Khonahas and Ranas (Tharu)<sup>58</sup> WWF interprets and takes the article 51(j) (8) as a constitutional provision relating to obtaining the Free Prior and Informed Consent (FPIC).<sup>59</sup>

### **IFAD's Work in Nepal with Indigenous Peoples' Organizations**

IFAD projects:

<https://www.ifad.org/en/web/operations/w/country/nepal>

IPAF projects:

[https://www.ifad.org/documents/38711624/41839851/ipaf\\_asia\\_e.pdf/b5122e37-c7ba-3648-47e3-e3592ba19b42](https://www.ifad.org/documents/38711624/41839851/ipaf_asia_e.pdf/b5122e37-c7ba-3648-47e3-e3592ba19b42)

Indigenous Peoples Assistance Facility (IPAF), established at IFAD in 2006, "aims to strengthen indigenous peoples' communities and their organizations in Africa, Asia and the Pacific, and Latin America and the Caribbean by financing small projects which foster their self-driven development in the framework of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)." (IFAD 2018, p. 9).<sup>60</sup> "Through small grants ranging from US\$20,000 to US\$50,000 and lasting up to two years, the Facility supports the initiatives designed and implemented by indigenous peoples' communities and their organizations that build on their culture, identity, knowledge, and natural resources. Since 2007, as a result of four calls for proposals (2007, 2008, 2011, and 2015) that generated around 3,500 proposals, the IPAF has supported 127 projects in 45

---

<sup>55</sup> NKP, 2070, Volume 4, D N. 8990 P. 923

<sup>56</sup> Sec. 9 of the Treaty Act, 1991

<sup>57</sup> Point 3.3.9, of the Fifth, National Action Plan on the Human Rights, Government of Nepal, 2077/78-2081/82

<sup>58</sup> WWF Indigenous Peoples Planning Framework (IPPF) and Process Framework (PF), 2019 P. 13

<sup>59</sup> Ibid. P. 23

<sup>60</sup> IFAD (2018). The Indigenous Peoples Assistance Facility (IPAF) ASSESSMENT OF THE PERFORMANCE OF THE FOURTH IPAF CYCLE. Desk Review. Accessed from [https://www.ifad.org/documents/38714170/41013759/IPAF\\_report\\_e\\_web.pdf/7f262882-599e-dc77-d85e-a89996583b05?t=1549875791000](https://www.ifad.org/documents/38714170/41013759/IPAF_report_e_web.pdf/7f262882-599e-dc77-d85e-a89996583b05?t=1549875791000)

countries for a total of about US\$3.6 million financed by IFAD, the World Bank and the Governments of Canada, Finland, Italy and Norway. Objectives and components." (IFAD 2018, p. 9).

The main objectives of the IPAF are to (IFAD 2018, p. 9):

- Enhance the capacity of indigenous peoples' communities and their grassroots organizations to design and implement development projects based on their identity, culture, knowledge and natural resources;
- Assist indigenous peoples' communities and their organizations to mobilize funds from programmes financed by governments and/or other donors for their grassroots projects;
- Strengthen indigenous peoples' networks at the regional level and link them up with the global indigenous peoples' movement; and
- Generate and share knowledge on indigenous peoples' self-driven development, thus contributing to policy dialogue on issues affecting indigenous peoples.

The IPAF comprises three main components (IFAD 2018, p. 9):

- Component 1: Empowering indigenous peoples' grassroots organizations;
- Component 2: Strengthening indigenous peoples' networks and linking them with the global indigenous peoples' movement;
- Component 3: Knowledge management (KM).

IFAD has worked in 17 countries, including Nepal, in the Asia Pacific region.<sup>61</sup> It implemented 5 programmes, two in 2008, one in 2011, and two in 2019, which targeted to Indigenous Peoples of Nepal through Indigenous Peoples' Organizations and NGOs run by the dominant caste groups (Table 5).

Table 5 IFAD projects in Nepal on IPs issues implemented from 2008 to 2019

| S.N. | Title   | Year | Partner Organization             |                                       | Project Areas   | Target Indigenous Peoples | Amount in US\$ |
|------|---|------|----------------------------------|---------------------------------------|---|---------------------------|----------------|
|      |   |      | Indigenous Peoples Organizations | NGOs run by the dominant caste groups |   |                           |                |
| 1    | Environment Conservation through Indigenous Community Empowerment | 2019 |                                  | EcoHimal Nepal                        | Sankhuwasava, Province 1, Bhotkhola Rural Municipality ward 2, Rukuma and Chepuwa | Lhomi Shingsaba           | 38,698         |

<sup>61</sup> IFAD (n.d.) Summary of IPAF projects approved in Asia and the Pacific, Accessed from [https://www.ifad.org/documents/38711624/41839851/ipaf\\_asia\\_e.pdf/b5122e37-c7ba-3648-47e3-e3592ba19b42](https://www.ifad.org/documents/38711624/41839851/ipaf_asia_e.pdf/b5122e37-c7ba-3648-47e3-e3592ba19b42)



|   |  |      |  |  |  |   |        |
|---|--|------|--|--|--|---|--------|
| 2 | Indigenous Youth Empowerment and Creating, Income-Generating Project       | 2019 | Indigenous Nationalities Women Youth Network <sup>62</sup> |  | Khadbari Village in the Sankhuwasabha District, Churiyamai Villa of the Makawanpur District, Tatpani Dhuskun Village of Sindhupalchowk District, and Sanogau of the Lalitpur District. | Kulung, Tamang, Newar and Thami indigeneous communities | 48,440 |
| 3 | Empowering Tharu by Promoting Cultural Values                              | 2011 | New Resource Mobilization Center (NRMC)                    |  | Bajuri, Dharna, Dhikpur, Duruwa, Ghorahi, Halower, Hapur, Laxmpur, Manpur, Narayanpur, Phulbari, Rampur, Saundiyar, Uakali, Urahari Tharu  |   | 46,000 |
| 4 | Chepang community incentives for sustainable livelihoods                   | 2008 | Centre for Rural Resource Promotion, CRP Nepal             |  | Makwanpur District   | Chepang   | 15,500 |
| 5 | Promotion of indigenous peoples' rights in the Constitution-making process | 2008 | Kirat Yakthung Chumlung <sup>63</sup>                      |  | Eastern part of Nepal, is also known as the traditional homeland of Limbu indigenous peoples (61 villages of nine districts: Taplejung, Panthar, Ilam,                                 | Limbu   | 16,000 |

<sup>62</sup> <https://inwynnepal.wordpress.com/home/>

<sup>63</sup> <https://www.chumlung.org.np/article-b2dWjw==#>

|  |  |  |  |  |   |  |  |
|--|--|--|--|--|---|--|--|
|  |  |  |  |  | Jhapa, Morang, Sunsari, Dhankuta, Terhthum and Sankhuwasabha) |  |  |
|--|--|--|--|--|---|--|--|

**Source:** Adapted from IFAD (n.d.) Nepal, pp. 16-18, In IFAD (n.d.) Summary of IPAF projects approved in Asia and the Pacific,

Accessed from [https://www.ifad.org/documents/38711624/41839851/ipaf\\_asia\\_e.pdf/b5122e37-c7ba-3648-47e3-e3592ba19b42](https://www.ifad.org/documents/38711624/41839851/ipaf_asia_e.pdf/b5122e37-c7ba-3648-47e3-e3592ba19b42)

### Projects Implemented by IPOs

- IFAD provided a Grant amount of US\$ 16,000 in 2008 to Kirat Yakthung Chumlung, an IPOs of the Yakthung (Kirat) nation, for the Promotion of indigenous peoples' rights in the Constitution-making process in the organization's project areas in the Eastern part of Nepal, also known as the traditional homeland of Yakthung (Limbu) Indigenous Peoples (61 villages of nine districts: Taplejung, Panthar, Ilam, Jhapa, Morang, Sunsari, Dhankuta, Terhthum, and Sankhuwasabha). IFAD states,

"This project contributed to empowering the Limbu indigenous people through awareness-raising and capacity-building, with the long-term goal of establishing Limbuwan autonomy and incorporating indigenous peoples' rights in the new constitution of Nepal. The project organised advocacy and lobbying activities such as organizing a consultation workshop, network formation, and an interactive programme with political leaders. Further, it provided training on international instruments such as the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169, and on social inclusion, constitution-making, federalism, autonomy, and the right to self-determination. The Pressure groups formed by Limbu forced the government and the constituent assembly by means of performing their traditional musical instruments while official meetings were being held. They submitted to the thematic committees of the Constituent Assembly their concerns and suggestions through position papers prepared on the basis of UNDRIP and ILO 169. 28 women were trained in leadership and legal literacy and started holding decision-making positions; 18 women pressure groups were formed and worked for the inclusion of indigenous women's rights in the new constitution; they actively participated in the workshops, in the interactions and the movement for the establishment of Limbuwan autonomy. The project led to the inclusion of Limbuwan province in a concept paper and preliminary draft prepared by the Committee on State Restructuring and Distribution of State Power and submitted to the Constituent Assembly; the Committee for Determining the Structure of Constitutional Bodies proposed a commission on IPs' rights as a constitutional body; political parties started including in their agenda the issue of Limbuwan autonomy. Moreover, other IPs of Nepal fighting for establishing their respective autonomy in their territories have taken from the Limbuwan movement a source of inspiration to launch their own activities." (IFAD, n.d., p. 18).

This is the only IFAD project implemented in Nepal that was in line with the UNDRIP and such projects should have been continued with Kieat Yakthung Chumlung and also expanded to support the Tharu, Magar, Tamu (Gurung), Tamang, Khambu (Rai) and other Indigenous Peoples until the new constitution was passed by the Constituent Assembly, which happened in 2015.

- IFAD provided a Grant amount of US\$ 48,440 in 2019 to the Indigenous Nationalities Women Youth Network Project to implement Indigenous Youth Empowerment and Creating, Income-Generating Project in Khadbari Village in the Sankhuwasabha District, Churiyamai Villa of the Makawanpur District, Tatpani Dhuskun Village of Sindhupalchowk District and Sanogau of the Lalitpur District. Its targeted IPs group(s) were Kulung, Tamang, Newar and Thami Indigenous communities benefitting 900 Indigenous youth (850 women and 50 men) in the Kulung community in Sankhuwasabha District by supporting the effective exercise of their rights and improvement of their livelihoods. This project was expected to "empower these beneficiaries to understand and voice their issues and concerns for policy advocacy; build their capacity to apply and document their knowledge, skills, and practices in sustainable forest and natural resource management as sources of indigenous peoples' community livelihoods; and increase their income through income-generating activities" and the expected results of the project included "the creation of a network of young indigenous women leaders and the development and implementation of action plans for the communities to manage their resources and strengthen their collective action." (IFAD, n.d., p. 16).
- IFAD provided a Grant amount of US\$ 46,000 in 2011 to New Resource Mobilization Center (NRMC) for Empowering Tharu by Promoting Cultural Values in project areas Bajuri, Dharna, Dhikpur, Duruwa, Ghorahi, Halower, Hapur, Laxmpur, Manpur, Narayanpur, Phulbari, Rampur, Saundiyar, Uakali, Urahari targeting to Tharu IPs (IFAD, n.d., p. 17-18). According to IFAD (n.d., p. 18),

"This project supported Tharu systems and cultural traditions, highlighting sustainability, peace, and prosperity within and outside the community. It aimed to strengthen the tribal governmental system, promote the arts and culture of Tharu, and empower women through strategic income generation programmes that support environmental and cultural sustainability. Thanks to the project, 15 Mahatau committees with 238 members were formed in order to build up the national-level network of Mahatau, enabling them to have a voice on issues of culture and rights and to ensure their meaningful participation in decisions regarding local development. Training on ILO 169 and social inclusion were also organized. Three cultural festivals were organized to promote and preserve the Tharu culture and provided an important occasion to pressure the members of the constituent assembly to address the issues of Tharu culture in the upcoming constitution. Furthermore, 129 women's groups were formed with a total of 2 170 members. They were provided with vocational and income generation training, which enabled the groups to start saving money to be used for income generation programmes and start-up of businesses such as goat and pig raising and cultivation. Gender equality and other capacity-building training were also organized. The New Resource

Mobilization Center organized a Youth Campaign, which was attended by 52 youths. The aim was to trigger inter-generational dialogue about the importance of Tharu culture."

Some activities are partly in line with ILO Convention no. 169, but some activities such as vocation and income generation training and start-up business of goat and pig raising are not related to collective rights of the Tharu.

### **Projects Implemented for IPs by NGOs**

- Chepang community incentives for sustainable livelihoods Year 2008 Organization Centre for Rural Resource Promotion, CRP Nepal Project area Makwanpur District IPs group(s) Chepang Grant amount US\$ 15,500 Project description This project contributed to the empowerment of the Chepang indigenous community in Nepal, especially women and deprived members, whose access to productive resources is low and who rely heavily on natural resources to sustain their livelihoods. Main project objectives and outputs:
  - a) To support community development by way of group formation, literacy education, and awareness programmes on health and hygiene. An orientation workshop and a workshop on health, hygiene, and sanitation were conducted. Three groups were formed and savings were collected in each of the groups. Literacy education classes were conducted for 48 participants and in the end, 19 participants were able to read and write. Toilets and goat shades were constructed in 55 participant households and a toilet was constructed at a local school.
  - b) To provide food and nutritional supplements through fruit and vegetable farming. Seeds of different vegetables and fruits were distributed and planted by the households, who became able to grow and consume them even in the dry season.
  - c) To contribute to increased household income. Goat raising was carried out by 55 households. Some of the households started selling goats as well as vegetables from their kitchen gardens.
  - d) To support afforestation and environmental management. Tree plantation was carried out in and around the proposed project area. Improved cooking stoves, which consume lesser firewood and also emit less smoke, were installed in 55 households.
  - e) To support Gender Mainstreaming and Women's Empowerment. Women were involved in each of the groups, and their participation in training and workshops as well as literacy education classes was encouraged.

The main outcomes of the projects were: improved sanitation, improved food security and nutrition, and improved capacity for collecting savings, which were mobilized within the groups.

- IFAD provided a grant amount of US\$ 38,698 to EcoHimal Nepal, a national NGO with leadership of the dominant caste group,<sup>64</sup> in 2019 to implement a project on Environment Conservation through Indigenous Community Empowerment in Sankhuwasava, Province 1, Bhotkhola Rural Municipality ward 2, Rukuma and Chepuwa targeting IPs group(s), namely Lhomi Shingsaba. The project, according to the IFAD, aimed to "empower indigenous communities to improve climate change mitigation and adaptation, building on their forest, natural resource and biodiversity assets" "with a clear focus on youth and women, the project objectives are to reduce firewood consumption, supporting forest conservation and climate change adaptation, and decrease the prevalence of lung diseases caused by indoor air pollution." IFAD expected that the project would "enable indigenous peoples to adapt to and mitigate climate change by integrating ecosystem conservation, environmentally friendly technologies, capacity-building activities for forest and soil management, and indoor hygiene and sanitation." IFAD stated that the programme directly benefits at least 630 people in terms of " training and awareness about the installation of improved cooking stoves, firewood consumption, forest conservation, indoor air pollution and its impact on health and the environment."

---

<sup>64</sup> The website of EcoHimal Nepal provide no information about the names of Board of Directors and Staff in About us and Board of Directors. See <https://ecohimal.org.np/page/board-of-directors> and <https://ecohimal.org.np/page/board-of-directors>

