

Human Rights Council
Expert Mechanism on the Rights of Indigenous Peoples
Sixth Session, 8-12 July 2013
United Nations office, Geneva, Switzerland

Agenda Item: 7: Proposal to be submitted to the HR council for its considerations and approval.

Adivasi Janajati is a widely accepted and well known groups of people who are culturally distinct groups ; who inhabited parts of present day Nepal before the arrival of the Aryans, who have been excluded from the dominant social and religious hierarchy, and political process. The groups collectively called Adivasi Janajati are identified, both by the Government of Nepal, and by the groups themselves, as "indigenous peoples" or indigenous "nationalities" distinct from the rest of Nepal's population.

At present, Nepal is going through a very sensitive time of making new constitution with state restructuring agenda. Unfortunately, the constituent assembly was dissolved without promulgating constitution which was a big loss for the Indigenous peoples of Nepal.

It is worth sharing about the recommendations made by UNSR Prof. James Anaya with regard to the issues of Indigenous peoples of Nepal

Noting the recent political situation in Nepal following the dissolution of the Constituent Assembly in May 2012 and the call for elections for new constitutional drafting process in April 2013, the Special Rapporteur conveyed concerns expressed by indigenous peoples' representatives that the progress made by indigenous members of the former Constituent Assembly could be lost and their demand to ensure indigenous peoples' participation in new process through an established consultative mechanism. "... the indigenous members of the Constituent Assembly were not chosen directly by indigenous peoples themselves, but rather by political parties. Nevertheless, ...[they] were able to form their own political caucus and successfully built alliances within the Assembly in order to promote indigenous demands for self-determination, autonomy, and land and natural resource rights within a framework of identity-based federalism," the Special Rapporteur writes. "... one of the thematic committees within the Constituent Assembly, the Committee on State Restructuring and Power Redistribution, presented a proposal for the division of Nepal into 14 states and 23 'autonomous regions' or 'special protected areas'." "However, the Constituent Assembly was dissolved in May 2012, reportedly due to disagreements regarding the reorganization of the Nepali state under a federal structure defined along ethnic lines. Despite having obtained the necessary support within the Assembly, members of the dominant Brahmin and Chhetri groups allegedly sought to repeal the 14-state proposal favored by indigenous, Madhesi and Dalit members of the Assembly," he adds.

The Special Rapporteur has thus requested information from the Government whether such consultative mechanism would be provided in the new process for constitution drafting and

measures would be taken to ensure adequate representation of indigenous peoples in the new process including through their traditional selection processes. He has also sought knowledge of the steps taken to ensure achievements made in former Constituent Assembly, in terms of recognition of cultural, linguistic, autonomy, self-determination and other rights, are maintained in future process. Further, the Special Rapporteur noted the incidents of violence and alleged criminal persecution of indigenous leaders in Nepal due to disagreements over federal structure. Referring to reported attacks by members of Brahmin-Chhetri caste groups and excessive use of force by police against indigenous Tharu people, including destruction of their cultural museum, in May 2012 in Kawsoti and Dhangadhi over the issue of Undivided Far West, he has requested information about measures taken to investigate and sanction those responsible for the alleged incidents and compensate the victims. The Special Rapporteur also wrote about the alleged charges of committing 'heinous crimes against the integrity of the state' against group of 17 members of Pallo Kirant Limbuwan Rastriya Manch (PKLRM), an indigenous rights organization representing indigenous peoples in Limbuwan region of eastern Nepal, in March 2009 when they were holding meeting with indigenous peoples in the region about constitution drafting process. Subsequently, a warrant for the arrest of ten PKLRM member was issued to which concerned district court rendered decision against them in their absence and without sufficient evidence. As a result, they reportedly fled Nepal given their previous experience of detention and torture while their family members have allegedly been harassed and persecuted to disclose their whereabouts. To this, the Special Rapporteur has sought information about efforts undertaken to ensure that the charges against the ten PKLRM members comport with due process.

I'm reiterating the recommendations of Special rapporteur to examine whether the recommendations are well responded.

With this, I'd like to draw attention of Expert Mechanism to study and recommend the council the following concerns of Indigenous peoples of Nepal:

1. As guaranteed in sibling Article 1 of United Nations Charter, 1945; International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1966 and Articles 3 and 4 United Nations Declaration on the Rights of Indigenous Peoples 2007, right to self- , autonomy and self-governance should be implemented effectively in the context of restructuring of the State.
2. The government had agreed to form a mechanism consisting of representatives from traditional and representative institutions of indigenous and tribal communities up to the local levels of the country for implementation of 'Free, Prior and Informed Consent (FPIC)' guaranteed in International Labour Organization Convention No. 169 and United Nations Declaration on the Rights of Indigenous Peoples. It has not been implemented yet.
3. Indigenous and Tribal Peoples' Commission, mentioned in the 20-point agreement made with the Government of Nepal as a result of the movement of Nepal Federation of Indigenous Nationalities (NEFIN), hasn't yet been implemented.

4. For monitoring human rights of Indigenous Peoples in an institutional manner, National Human Rights Commission should provide recognition to Indigenous Peoples Human Rights Defenders based on principle of collaboration.
5. As the Government of Nepal has not formulated procedural laws and rules necessary for the implementation of ILO C.169 even after five years since the adoption of the Convention by the Government that considered the Convention as national law, required laws should be focus of the EMRIP Study.
6. Original names of various sites of cultural and historical importance in indigenous that reflect their identity in indigenous languages should be revitalized in order to bring an end to the loss of identity of those sites
7. As language is the main basis of identity and rights of indigenous peoples and many persons of indigenous communities are deprived of services and facilities from government offices and courts due to their inability to speak Khas-Nepali language, translators for indigenous languages should be provided in those bodies.
8. Concluding that acts of encroachment conducted in the name of development in land, territories and natural resources of indigenous and tribal peoples violate their economic, social, cultural and other rights and struggles against such act constitute movement for promotion of human rights, such acts including road expansion being undertaken by state and non-state actors should be done in consultation with the local people by implementing free, and prior informed consent.
9. As acts of violating the rights of indigenous and tribal peoples to their lands, territories and natural resources are occurring in swift manner in the name of militarization and various projects of conservation and development being undertaken by state and non-state actors in different parts of the country. The indigenous people of Nepal wants such oppressive acts of violating indigenous rights should be stopped.

Statement forwarded by:

Rajani Maharjan, Newa Dey Daboo (Newar Indigenous Peoples' Organization, Kathmandu, Nepal)

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Rajani Maharjan