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Kirat Yakthung Chumlung-2046

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Ref: 31.....

July 21, 2006

To
Hon Defense Minister,
Defence Secretary, Defence Ministry Govt.
Singh Durbar, Kathmandu.

Subject: Letter of Memorandum.

Honorable,

The indigenous inhabitants Limbu, who use to live in Limbuwan the eastern part of Nepal, have there own religious, rituals and culture. Their lives are closely connected with natural things like mountains, hill, forest, river, stream etc of their locality. They worship the nature. In accordance with death ritual, they bury the dead body in the height of forest or hill. After cremating traditionally, they use to build tomb in deaths memory. It is called chihan chautara. From centuries back, they worship different places. Such things and places have cultural, historical as well as architecharal value too.

The state's duty is to protect and preserve such valuable places. But if is felt that the state is not paying attention towards state's duty. So, by this memorandum we want to draw attention for taking positive action the indigenous Limbus of Myanglung and Tumphula village are using the land which is situated in ward no 9 of Myanglung VDC. According to surveyed scale, kitta No 411 was 25-0-3-1 of land. The boarder of the land is kitta No 548,550 from the east, kitta No. 420 and 421 from the west and kitta No. 428 and main road from the south.

But Nepali army has occupied 16 to 17 Ropanees of land from kitta No. 411 since 2059-060 BS. The army already surrounded the area by fence. Due to army's capture of the land the limbu's traditional religion and its chihan chautara and other monuments and architectural things may likely disappear.

That is why occupied land should return to Limbu immediately and necessary action has to be taken to protect and preserve it. Here with we enclosed the scale kitta No. 411, which was provided by Teharathum district branch office of survey dept.)

By this way Nepali army is trying to register the other piece of land or behalf their name. The land is 17 thum Goeswari mandir. (Yuma manghim) where is situated in Chokmagu-3 Lobrekuti of Panchthar district. They wanted to establish military base camp there. We strongly demand to stop such activities in immediately.

Arjun Limbu
Chairman

Cc:
Honorable, Bijaya Subba M.P (Tehrathum)
Hon. Dambar Sambahangphe M.P (Panchthar)
Hon. Basanta Nemwang M.P (Panchthar)

FROM: Kirat Yakthung Chumlung, Kathmandu, Nepal.

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TO: Mr. John Pace, Chief

Research and Right to Development Branch

High Commissioner for Human Rights.

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Pages: 5



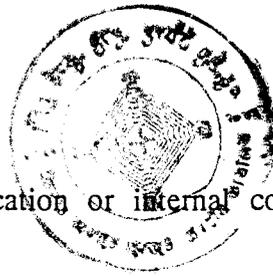
Comments on Preliminary Working Paper on Indigenous People and Their Relationship to Land

We have received UN-ECOSOC document on the **Human Rights of Indigenous Peoples: Indigenous People and the Relationship to land, a Preliminary Working Paper** prepared by Mrs. Erica-Irene Daes, Special Rapporteur and circulated it to our members. We organized three meetings of our members and other distinguished persons of our ethnic group (Limbu) for the discussion on this paper. We have come to the conclusions to make the following comments on behalf of our organization, Kirat Yakthung Chumlung, so that it can also reflect our issues and sentiments.

There is no doubt that the paper is precise, excellent and throws light on several aspects of indigenous peoples' problems and difficulties. However, the processes, patterns, forms and nature of the violations and encroachment on the rights of indigenous peoples in relation to land, territories and resources differ from country to country and place to place. In brief we want to make the following comments:

1. Doctrine of dispossession :

The paper describes the history, background and impact of the doctrines of dispossession that seem to be relevant to the colonized countries. But we have different experiences. We, the Limbus (Yakthung) of Nepal, believe ourselves to be autochthons of our territory "Limbuwan". As regards the doctrine of dispossession, our historical accounts reveal that national integration, often described as painful process of Nepalization (Gaije, 1975; Bista, 1982; Subba, 1995) characterized by Sanskritization or Hinduization and marginalization of indigenous peoples (Gurung, 1994), destruction of indigenous values and social order and imposition of Brahmanic (high caste) values, discriminatory laws and legal treatment, concentration of powers in the hands of a few Hindu high caste people such as Brahmins and Chhetris, subjugation of indigenous peoples by any means and disregard of human rights has become the basic doctrine of dispossession in Nepal. It has caused irreparable loss and immense suffering to indigenous peoples. It legitimized absolute powers to the rulers/administrators and oppression of the indigenous peoples of annexed territories and established the supremacy of Indo-Aryans or high-caste Hindus over indigenous peoples. We believe that not only the colonization of indigenous territories by colonial powers, non-recognition of indigenous peoples rights, Christianization of indigenous peoples are the doctrines of dispossession, but internal colonization or the ruthless process of national unification is also equally powerful doctrine of dispossession. So, the paper should



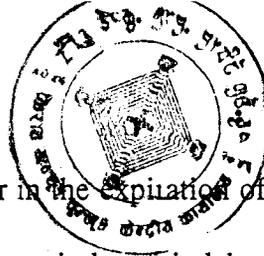
incorporate the process of national integration/unification or internal colonization as a doctrine of dispossession citing the example of Nepal.

2. Framework for the analysis of contemporary problems regarding indigenous land rights:

As regards to the framework for the analysis of contemporary problems regarding indigenous land rights, we would like to present our case and refer some points to be included in the framework.

The land tenure system confined to the indigenous peoples of Mongoloid origin is known as Kipat. This system was prevailing among Limbus till the later half of 1970s. Kipat includes land, territories, resources and traditional social system. This system was recognized to the Limbus again by the first ruler of unified Nepal through a royal decree (treaty) of 1774. Kipat areas of Limbus cover approximately 11,302.2 sq. km and this territory is known as Limbuwan. Kipat is a land cleared and occupied by first settlers and so, it is an inalienable land of autochthons (Chemjong, 1959). Kipat is a communal form of land tenure and under this system, land is held on a tribal, village, kindred or family basis and it is usufructuary (Regmi, 1977). Kipat is not only a lands of all physical categories, such as homesites, dry lands, paddy fields and pastures, but also overall forests, water and mineral resources (ibid.). Kipat, as delineated by eminent anthropologist Lionel Caplan (1990), was a form of "inalienable wealth", for Limbus and it stood for their way of life and thus symbolized the cultural vitality and continuity of the community. He further mentions: "To the Limbus, the loss of Kipat represents not simple a material loss, for Kipat transcended its own materiality. With its abolition the Limbus were denied a part of their past and so, inevitably, of their sense of continuity in the present. Kipat provided a means of belonging, to a place and a distinctive community – the one not separable from the other. In short, it defined them as a "tribe". Dr. Caplan (1970) is also of the opinion that Kipat "is fused with and articulates the culture" and "any assault on Kipat is seen as a threat to the very existence of the Limbu as a separate community within the society" and "thus cultural identity becomes political identity in the context of the struggle to preserve the Kipat system". Another French Anthropologist Phillippe Sagant (1996) concludes in a study that Kipat tenure system guaranteed the stability of clan and preservation of traditional institutions. This Kipat system was repeatedly confirmed afterwards till 1961 (Shrestha, 1985). But in actual practice, several measures were adopted to dispossess Limbus of their Kipat (Regmi, ibid; Shrestha, ibid; Sagant, ibid;). These were gradual processes of encroachment on Kipat system. Some of the measures were:

- (i) encouragement by the government for the settlement of non-Limbus in Kipat area in various ways i.e. government's immigration policy (1974 onwards);
- (ii) introduction of the system of revenue settlement that expedited the process of conversion of Kipat into Raikar or land under state's ownership (during 1774-1820; 1820-1960; and 1960 and 1960-1995);
- (iii) expropriation of Kipat holdings of fugitive Limbus and granting such lands to non-Limbu settlers i.e. indo-Aryans and converting into Raikar (during 1881);
- (iv) no legal restriction to alienate Kipat prior to 1883;
- (v) permission to alienate the dry lands to non-Limbu settlers (since 1903);
- (vi) introduction of alien Hindu practices of credit, loan and mortgage system and long stipulated redemption period;



- (vii) legal provisions for conversion of Kipat land into Raikar in the expiration of stipulated period;
- (viii) lack of legal provision to redeem Limbus from vicious circle of indebtedness that forced for land alienation;
- (ix) lack of documentary evidence of title due to customary rights on lands that paved the way to favor non-Limbu settlers, i.e. Indo-Aryans for land alienation;
- (x) orders not allowing resumption of lands (Kipat) where homesteads were constructed by non-Limbus;
- (xi) survey of the Kipat land, that allowed to convert Kipat into Raikar each time;
- (xii) introduction of the system of becoming Subba, a tax collector, dispenser of justice at certain territory and responsible official for local management, by surrendering 60 Muris of land, i.e. land that exact Rs. 30 as land revenue;
- (xiii) confiscation of reclaimed land in favor of informants, who were non-Limbus and its conversion into Raikar;
- (xiv) promulgation and enforcement of various laws such as Acts relating to forests, mineral resources, tax/revenue, and land tenure, Panchayat (Local Bodies of Political System), and land reform that undermine, encroach and terminate the once-recognized rights of Kipat of Limbus; and
- (xv) enforcement of discriminatory laws and policies from time to time to promote Kipat alienation and deprive Limbus of their own resources and territory.

In fact, the treaty of 1974 was not abrogated nor was the legislation introduced to extinguish or terminate rights of Limbus on Kipat. It was "nibbled at, not swallowed whole" (Caplan, 1970). Eventually, Limbu became landless in their own territory and their resources are exploited for the benefit of others.

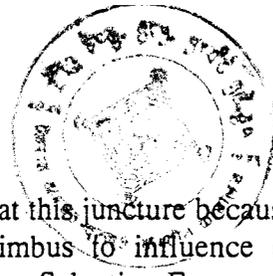
So, not only the failure of the states to acknowledge indigenous rights to lands, territories and resources but recognition at the time of crisis or annexation and gradual encroachment afterwards is also a fundamental problem in connection with indigenous peoples' ownership of land.

3. Efforts to resolve indigenous land issues:

Regarding the efforts to resolve indigenous land issues, we think the paper should also focus on:

(i) some of the efforts of some countries of South Asia, such as the efforts of Bangladesh Government to solve Chakma issues, efforts of Sikkim (of India) to resolve ethnic issues and linking development purposes with tribal and backward peoples' progress; and various efforts and implementation of accords in many areas/states of India.

(ii) It is evident in our case that there is neither judicial mechanism nor mechanism for negotiation to address our Kipat issues/problems. Our present constitution does not provide us any avenue/outlet to resolve indigenous land or Kipat issues and thus protect or secure indigenous land rights. Human rights, which can be enjoyed by only the members of advanced, established, and affluent classes are well explained in the present constitution of Nepal, but indigenous peoples' rights have been neglected. However, some provision of the constitution indicate that legislation can be introduced to restore the rights of Limbus on Kipat and restitution or compensation can be given to the dispossessed people from their



Kipat or indigenous land. But this option does not seem viable at this juncture because of the negative attitudes of present lawmakers and inability of Limbus to influence majority lawmakers. Due to the lack of constitutional remedy, Khambuwan Salvation Front, one of the indigenous party of Khambu people, has already resorted to violence means.

(iii) In fact, indigenous peoples' initiatives in most of the South Asian countries including Nepal, are the resistance movements against expropriation, dispossession and encroachment of rights on land, territory and resources; dissolution and disparagement of traditional indigenous institutions and forced replacement by alien ones; state suppression and discrimination; and interference on internal self-determination and the use and management of indigenous land and resources. Limbus, for example, vehemently opposed the encroachment of their antimony and territorial rights from time to time (during/in 1776-77, 1791-93, 1833, 1834-36, 1844, 1854, 1868, 1883-1884, 1886, 1888, 1890-1893, 1899-1901, 1916-17, 1919, 1947). They were severely penalized, imprisoned and had to run away to avoid government's cruel treatment. Mass exodus of Limbus during the later years of eighteenth century, migration of Limbus in great number during nineteenth century and imprisonment and death penalties to some Limbus during earlier half of 20th century are some of the unhappy incidences resulted from such opposition. Resistance movements did not fade away even after the advent of democracy in Nepal in 1951. Even in 1968, Limbus opposed the abolition of Kipat system and their delegates, Mr. Krishna Bahadur Thangden, Mr. Man Bahadur Panjyanua and Dal Bahadur Khapung were imprisoned for six months. Mr. Bir Nembang, Mr. Prithvi Bahadur Maden, and Ganga Bahadur Lingkhim were arrested and imprisoned for three years for just on the charge of distributing pamphlets appealed Limbus to become aware of their rights to their land (Kipat) and territory (Limbuwan). Now indigenous people's organizations, including Kirat Yakthung Chumlung, are trying to create mass awareness on indigenous peoples' rights. For Limbus of Nepal, the demand for the right to land, territory and resources is also associated with the right to self-determination or territorial autonomy on the one hand and proportionate representation in decision/policy making levels and reservations in employment, education and human resource development on the other.

The principles that guide Limbus' movement are: (a) the non-alienability of Kipat lands should be protected and ownership should be resumed, (b) possible conflict between state and Limbus should be avoided and amicable solution should be explored, (c) indigenous peoples should have opportunities to enjoy basic human rights, (d) discriminatory laws and constitutional provision should be mollified or amended, (e) socio-economic, cultural, spiritual development of Limbus should be materialized, (f) national integrity should be strengthened in the true spirit of the people, (g) injustice and misdeeds of the past should be corrected and redressed.

4. Positive measures:

The paper describes some of the positive measures taken by some countries. But it does not suggest possible measures that can be adopted in other countries. Considering the brutal countermeasures of the government to suppress indigenous peoples' movements for the restoration of their rights to land, territories and resources, and for the guarantee of their basic rights, their participation in decision-making levels as well as specific programs for their progress and advancement, it is expedient that UN - High Commission for Indigenous Peoples' Rights to be created at the international and regional level. It is also utmost necessary that a tool, such as UN - Convention on the Rights of Indigenous Peoples in

relation to land, territories and resources, should be developed to protect indigenous peoples from human rights violation, state suppression and terrorism.

At this juncture, Limbus cannot find judicial remedy as there is no legal provisions that help them to address their Kipat issues and the injustice and oppression done to them in this regard. For Limbus, a National Commission for Indigenous Peoples' right to land, territory and resources and amendment in present constitutions might be appropriate mechanism to reverse the process of expropriation, dispossession and extinguishment of the rights of Limbus on their Kipat.

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