

United Nations Commission on Human Rights
Sub-Commission on Prevention of Discrimination and Protection of Minorities
Working Group on Indigenous Populations
Seventeenth Session, 26-30 July, 1999

Ref. Agenda No. 5: Dispossession of Communal Land Rights of Indigenous Population

Madam Chair,

May I take this opportunity to express my warm gratitude and thanks for giving me this opportunity. I am representing the Nepal Federation of Nationalities (NEFEN), which comprises nearly about 25 different nationalities under its network in Nepal.

It is quite exciting to us when we heard that UNWGIP organizes international gatherings on indigenous peoples every year, and followed by continental and regional meetings all around the world. Indeed, we now begin to get ourselves not alone and isolated as if our so-called neighbors often confined us in isolation. Our beliefs and values dragged us and determined to survive in the long discourse of the past days and we now belief that we would over come in the next day from centuries long isolation and oppression of patriarchies. Nepalese Nationalities are quite eager to spell out their experiences, ardent to share their skill and knowledge, and wild to express their histories in this context.

History, culture, and art of nationalities have never been written by the state sponsored persons or agencies rather pulled apart and fired on by the vigilantes of Vernashram system (caste hierarchical Hindu value) infiltrated from South India in the ninth century around. However, nationalities culture, traditional, and rituals which often says that there is an indispensable and an inseparable relationship exist between the nationalities and the land. Nepalese indigenous people's rituals and oral traditions are unique in the world. They deserve the enormous knowledge about the ethno-botany, the ethno-zoology, the universe and so on. That all the human resources or traditional knowledge has been at the verge of extinction since it has been neglected since a long time. Yes, it is agreed with the of notion of Working Paper 1997, that the 'the relationship with the land and all living things is at the core of indigenous societies.' In this regard, Prof. Robert A. Williams account is remarkable here that the spiritual and material foundations of indigenous peoples' cultural identities are sustained by their unique relationships to their traditional territories.¹ Similarly Dr. Cobo's account is relevant here, which state that it is the urgent need to know and understand the deeply spiritual special relationship between Indigenous Peoples and their land as a basic to their existence, as such and to all their beliefs, customs, traditions, and culture².

Historically Nepal had the different types of land tenure, such as Raikar, Jagir, Rakam, Birta, Guthi, and Kipat.³ Among them Limbus and Khambus including most of the tribal nature of nationalities used to practice the customary right over their land since time immomerial. In due course of time the state launched the undue process of dispossession of land from nationalities or indigenous people, as

¹ See Mrs. Erica-Irene Daes, Working Paper on Indigenous People and their relationship to land, 1997.

² See Mrs. Erica-Irene Daes, Working Paper on Indigenous People and their relationship to land, 1997

³ Raikar: characterized as the state ownership of land and directly taxed to the operator;
Jagir: characterized unlike Raiker, but it is an emolument of office to government employees;
Rakam: it is also similar to Raikar and Jagir, but provided for the good performance of a specific functions mainly the professional types;
Birta: divesture by the state of its ownership rights in land in favor of private individuals, in other words, granted land to individuals to enable them to make a living;
Guthi is a land assigned for the use of charitable, religious or philanthropic institutions; and
Kipat: a essentially a form of communal tenure, as members of certanin ethnic groups are permitted to own land.

WGIP 99/SAS.NPL/3

a result their socioeconomic as well as cultural life has been deteriorating day after day. The instance of Limbu indigenous people is the latest and painful among nationalities.

Prior to the subjugation of Limbuan (territory of Limbu indigenous people), Limbu people had the communal right over land entitled as 'Kipat' under the Shen dynasty during seventeenth century. During the annexation process of unified nation state, King Prithivinarayan had decreed⁴ the communal right in the name of Limbu chieftains for generation and generation in 1774, continuing the autonomy they had had under the Shen dynasty. All types of land tenure abolished in 1951, except the Guthi and the Kipat system since the religious factors inherent in the Guthi and the tribal considerations involved in the Kipat system, particularly in respect of the Limbus⁵. In 1952, and 1962, two royal decrees were ordered to the Limbus ensuring their communal right of land. Later the state has been neither abrogated nor legislation introduced to extinguish or terminate rights of Limbus on Kipat. Dr. Caplan has very meticulously stated the expropriation process adopted by the state as 'it [Kipat] was nibbled at, not swallowed whole.'⁶ Without notifying or giving compensation, in fact, Limbus' land rights was extinguished in mid of 60s onwards.

The Nepalese government adopted the systematic expropriation⁷ of Limbu's communal right over land. On this dispossession of the communal title, Limbus' nationally representative organization Kirat Yakthung Chumlung has already suggested the amicable solutions⁸ to include the certain

⁴ King Prithivinarayan Shaha decreed on the name of Limbu chieftains and says, "Although we have conquered your country by dint of our valor, we have afforded you and your kinsmen protection. We hereby pardon all of your kinsmen and confirm all the customs and traditions, rights and privileges of your country...Enjoy the land from generation to generation, as long as it remains in existence...In case we confiscate your lands... may our ancestral gods destroy our kingdom.

⁵ See Mahesh Chandra Regmi, *Land Tenure and Taxation in Nepal*, Kathmandu, 1978.

⁶ see Lineonel Caplan, *Land and Social Change in East Nepal*, 1970

⁷ Encouragement by the government for the settlement of non-Limbus in Kipat area in various ways i.e. government's immigration policy (1974 onwards); introduction of 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 1960-1995); expropriation of Kipat holdings of fugitive Limbus and granting such lands to non-Limbu settlers i.e. indo-Aryans and converting into Raikar (during 1903); no legal restriction to alienate kipat prior to 1883; permission to alienate the dry lands to non-Limbu settlers (since 1903); introduction of alien Hindu practices of credit, loan and mortgage system and long stipulated redemption period; Legal provisions for conversion of Kipat land into Raikar in the expiration of stipulated period; Lack of legal provision to redeem Limbus from vicious circle of indebtedness that forced for land alienation; 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; Orders not allowing resumption of lands (Kipat) where homesteads were constructed by non-Limbus; Survey of Kipat land, that allowed to convert Kipat into Raikar each time; Introduction of the system of becoming subba, revenue collector, dispenser of justice at certain territory and responsible official for local management, by surrounding 60 Muris of land, i.e. land that exact Rs. 30as land revenue; Confiscation of reclaimed land in favor of informants, who were non-Limbus and its conversion into Raikar; and Promulgation and enforcement of various laws such as Acts relating to forests, mineral and land reform that undermine, encroach and terminate the once-recognized rights of Kipat of Limbus, and enforcement of discriminatory laws and policies from time to time to promote Kipat alienation and deprive Limbus of their own resources and territory.

⁸ 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 basic human rights (d) discriminatory laws and constitutional provision should be mollified or amended (e) socioeconomic, 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 correct and redressed.

measures in the Working Paper 1997. The progress report on the Working Paper has mentioned that the further attention to be given on this topic. I would like to draw the attention of the United Nations Working Group of Indigenous Populations to notify the government of Nepal to safeguard the basic human right of indigenous people and minorities of Nepal abiding with the UN Minorities rights and the draft declaration on rights of Indigenous Populations, which implicates the reestablishment of the agreements made between state and indigenous people as well as revitalization of the customary rights of nationalities.

We agreed upon the arguments made by certain states, academic institutions, non governmental organizations in the previous discussions that the recognition of the human rights of Indigenous Peoples would be the returning of 'all the lands and resources ever taken from Indigenous Peoples.' That is the sensible remarks towards the solution of indigenous people's problem despite of the high cost needs to be sacrificed by the both parties.

Nationalities, in overwhelming majority, living in rural areas are facing the adverse effects of the development projects, since their lands are used for the development. For instance, thousands of Tamang nationalities are mostly displaced on account of the hydropower projects meanwhile thousands of Tharu, Sherpa, and Rais people are afflicted with the Wild life Protection and National Parks. Dozens of villages are wiped out in the protected and wild life conservation areas. We believe that the proper representation of concerned indigenous people in the hydro power projects and wild life conservation areas would be the possible amicable solution. In addition, they must bear the right of sharing of income generated from the development projects. Another shameful and pity instance of landless people in Nepal is Kamiya or Bonded labor situation among the Tharu indigenous people who are, in fact, imprisoned in the enforced labor in the house of landlord for generation and generation. Their population exceeds more than 50, 000, who are in the servitude. Therefore, I would strongly urge with the our government through United Nations to abolish such an inhuman servitude immediately with full respect of the humanity ensured by the universal declaration of Human Rights and related instruments.

In Nepal, the patience of the nationalities has not been broken out yet, thus both the government as well as nationalities efforts towards the timely solution of the problem of indigenous peoples regarding land, resources and territory should be initiated in the vision of equity for all people and the nation.

At last, not least, I would like to extend my hearty thanks and warm gratitude to the High Commissioner for Human Rights, Board of Trustees of Voluntary fund and Working group on Indigenous Populations, and brothers and sisters of the world for your kindly listening and support to us.

Thank you very much,
Yours

Mr. B.K. Mabuhang
Secretary, Foreign Affairs
Nepal Federation of Nationalities
POBox 4548, Kathmandu Nepal
E_mail: cdps@wlink.com.np