

National Human Rights Commission, Nepal

Harihar Bhawan, Lalitpur

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Regional Dialogue in Asia

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Madam Chair,

Thank you very much for allowing me to take part in such a valuable discussion and to share my views on Indigenous People in Nepal on behalf of the National Human Rights Commission, Nepal (NHRCN).

As a Constitutional body, NHRCN has a broad mandate of protection and promotion of human rights of all including the IPs and, the Commission has been actively engaged in fulfilling its mandate in coordination with the Government, the indigenous people's organizations and relevant stakeholders.

Madam Chair and distinguished delegates,

Here I would like to share some of our works and experiences in this regard. Nepal is rich in cultural and ethnic diversity. There are 59 Indigenous Nationalities constituting 35 percent of the total population. Among them, few IPs like Raute are still nomadic.

In Nepal, the indigenous people are constitutionally termed as "*Adivasi Janajatis*". The Constitution of Nepal (2015) has ensured the right to dignified life for all including the IPs. There are constitutional provisions to ensure participation of the IPs in decision making processes concerning to IPs and to protect and promote their traditional knowledge, identity, skill and culture. The Constitution has envisioned two specific Commissions for the Indigenous people: Indigenous Nationalities Commission and *Tharu* Commission. *Tharu* is one of the specific indigenous communities in the Terai region.

The Constitution has also included provisions for proportional representation of the Indigenous and others People in the state apparatus, which can be regarded as a remarkably progressive element.

As per the complaints being received by the NHRCN from the IPs communities, many of them are related with people deprived from wider consultation on the issues of land, expansion of roads, environment, natural resources and developmental projects of the government in their territory. NHRC Nepal has mediated with the government agencies in some of the issues to respect and protect the rights of the IPs. In other cases, NHRCN has made recommendations to the government to address concerns that are raised by the IPs.

Despite the progressive provisions in the new Constitution, many indigenous communities are yet to enjoy full-fledged human rights and fundamental freedoms due to the ages-old discrimination, marginalization and disregard to their languages and identities by the state and ruling practices. This needs to be rectified as per the motto of the new Constitution of Nepal. Representation in all state structures and mechanisms including bureaucracy, parliament and judiciary should be properly addressed by the government and the political parties. The newly elected Parliament members and the government have huge responsibility in the days to come to formulate laws and policies compatible with the constitution and also for proper implementation mechanism of the laws.

The Government's war-footing effort to build massive infrastructure projects including water dam, (Commission's continuous dialogue with government authorities, IPs, HR defenders and victims of Khimti hydropower project in 2015-2016 led to the victims receiving compensation and relocation benefits) Hydro power, roads and other development projects should be launched by the government in consultation with the IPs respecting their rights. The conservative mind set of the development workers should be transformed into human rights based approach. Proper and effective mechanism should be developed to compensate them. It has been observed by the Commission that the Indigenous People are often subject of intimidation and exclusion by the state apparatus while conducting development works. There are instances that indigenous people lost their lands and suffered eviction from their settlements due to implementation of large scale infrastructure projects.

Many indigenous people have distinct identity, culture, language, history and institutional structures with spiritual connection with their lands. With their unique customary laws, knowledge system and values, the indigenous people are unique from other people in Nepal.

Government of Nepal ratified Indigenous and Tribal Peoples Convention, 1989, on September 14, 2007, as a significant step towards recognizing the IPs rights over the lands, natural resources, environment and development which is popularly known as ILO: 169 which is also compatible with SDG goals.

It was expected that the meaningful participation of the IPs would be respected in law making processes that affect their present life and future too. However, over the years, IPs have claimed to exercise their rights guaranteed by the ILO Convention 169 and UNDRIP into practice. The aspirations of IPS in Nepal as provisioned in ILO 169 are still to be addressed.

In relation to this, NHRCN has been consistently recommending the government to adopt the National Action Plan on implementation of the ILO Convention 169. Importantly, the ratification of 10 years will be in 2018, so NHRCN urges the government to be committed as a party to the Convention, since the implementation is pending in first 10 years.

NHRCN has been monitoring and investigating the human rights situation of the Indigenous People. With the promulgation of new Constitution, the political transition has now concluded and the NHRCN is planning to focus more strategically for the promotion and protection of the rights of the Indigenous People in the changed scenario.

NHRC Nepal facilitated to hold a constructive dialogue between representatives of IPs, government official and members of Parliament as well as other stakeholders to support in drafting the new laws concerning with IPs in accordance with the new Constitution, the ILO Convention 169 and, the UNDRIP.

Business and human rights can be the key issue for all to promote traditional business of indigenous community and also to make accountable to the business enterprises together with

government agencies. Intellectual property rights (IPR) of indigenous people should be protected and business companies should pay compensation to it.

Though this is new initiative, the business actors and government have shown great interest and requested for policy instruction to implement the UN Guiding Principle on Business and Human Rights. Meaningful Tri-partied dialogue among Indigenous People, Government and Business actors are unique model that can be shared as an example.

Last but not the least; NHRC-Nepal has recently organized Three-day South-Asian Human Rights Conference of NHRIs bringing Human Rights Activists, and Indigenous Leaders from International Level. The main theme was "Identifying Challenges, Assessing Progress, Moving Forward: Addressing Impunity and Realizing Human Rights in South Asia". Thus, NHRIs can play pioneer role on promotion of Indigenous People's Rights in South Asia. We would like to share this perspective as well.

Regional Dialogue and NHRI collaboration

There are challenges as well as opportunities in the areas of collective rights of Indigenous People that NHRC-Nepal would be very happy to share during the UNPFII Session and would like to actively participate in side events if it deems necessary.

The National Human Rights Institutions and Regional Mechanism on the Rights of Indigenous People are crucial to promote and protect rights of the Indigenous People. Therefore, both institutions can join hand in hand and work in collaborative manner. The following could be the areas of collaboration:-

- Nepal has entered into three-tiered federalism where legislative power is vested upon federal, state and local bodies that brought important opportunity for the promotion of indigenous peoples' rights that enshrined under the ILO Convention 169 and UNDRIP. NHRCN can collaborate in this issue internally.
- NHRC-Nepal is mobilizing the resources to encourage respective lawmakers to reflect the provisions of these instruments and ensure meaningful consultation with Indigenous People. In this area too, collaboration can be developed for common understanding at regional level for protection and promotion of IPs.

- NHRC Nepal anticipates expert advice on the technical aspects to implement the rights of the IPs in Nepal. Other NHRIs can use the area of expertise for the implementation of the IPs rights.
- I would like to request the Government of Nepal to implement NHRC Nepal's recommendations and to adopt the National Action Plan on implementation of the Convention 169. So that, more collaborative work can be done in this regard.
- Law review can be done to see compliance with the ILO Convention 169 and UNDRIP and report to treaty committees on time. Collaborative capacity building can be accompanied in this area too.
- The Government needs to develop proper mechanism for providing compensation and restitution to IPS displaced from the development work such as hydroelectricity, road construction and others. NHRIs can provide inputs in this matter.
- Nepal has entered in federal structure. Therefore, Provincial conferences can be conducted on the situation of IPs and at the end National Conference in Kathmandu. After the conferences, a National Report can be produced and collaborative works can be done on the situation of IPs in Nepal.
- Land and Development is coming as war footing effort to build new infrastructures. I would like to request UN permanent forum to re-emphasize the need of meaningful Tri-partite dialogue among the IPs, key actors and Govt. in order to respect the treaties and, reporting back from such dialogue will set follow up mechanism.
- I would like to request madam chair for our Independent participation as NHRIs and not as peoples' organization or Govt. This dialogue is such an important and special discussion.

I thank you!

Mohna Ansari

Hon. Member

National Human Rights Commission, Nepal