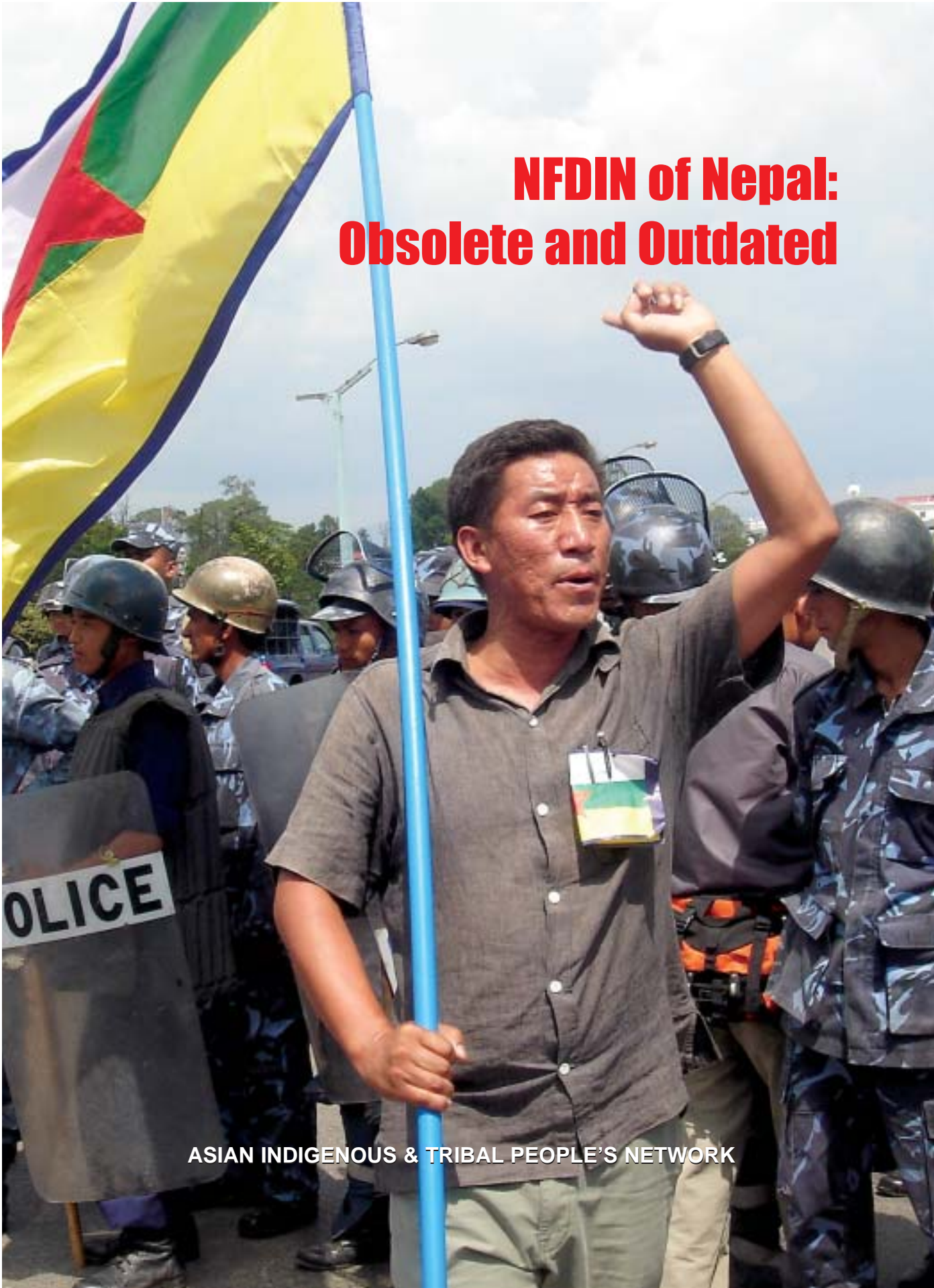


# **NFDIN of Nepal: Obsolete and Outdated**



ASIAN INDIGENOUS & TRIBAL PEOPLE'S NETWORK

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ISBN : 81-902318-7-1

Price : Rs. 295/-

Cover Photo : Courtesy Lucky Sherpa, Himalayan Indigenous Women Network

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# 1. Introduction

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On 2-3 May 2007, Asian Indigenous and Tribal People's Network (AITPN) with the assistance from the European Commission organised the "National Seminar on Transition in Nepal and the Role of National Institutions on Indigenous Peoples" in Kathmandu, Nepal. During the National Consultation, it appeared that indigenous peoples were virtually engrossed over two issues: "political representation" in the government through proportionate representation, and participation in the governance through "ethnic self-rule".

In the seminar, AITPN highlighted that development of effective national mechanisms is equally indispensable for ensuring the enjoyment of rights guaranteed in the Constitution, other national laws and international law. The National Foundation for Development of Indigenous Nationalities (NFDIN), which provides the legal basis for the recognition of indigenous peoples and also formalises the role of Nepal Federation of Indigenous Nationalities (NEFIN) to represent the interest of indigenous peoples with the government of Nepal is one such national institution. But, in the ongoing struggle, NFDIN was almost forgotten by indigenous peoples because of its failure to ensure their rights as a direct consequence of its weak mandate and lack of financial and human resources.

Based on its study on the NFDIN as provided in this report, AITPN was aware that a weak institution like NFDIN does not fit in new Nepal. It has miserably failed to protect the rights of indigenous peoples of Nepal and therefore, it cannot fulfill their expectations. AITPN was of the considered opinion that

even if the indigenous peoples of Nepal were to be granted proportional representation and ethnic self-rule, there would still be a need for a national institution which can ensure the enjoyment of the rights of indigenous peoples.

Therefore, AITPN, among others, recommended the establishment of National Commission for Indigenous Janjatis which shall conform with the United Nations Paris Principles on National Human Rights Institutions and draw lessons from the best practices of the existing National Institutions on Indigenous Peoples such as National Commission on Indigenous Peoples of the Philippines, National Commission for the Scheduled Tribes of India, the Aboriginal and Torres Strait Islander Commission of Australia etc.

This recommendation of AITPN was endorsed at the seminar by the then representative of the Office of the High Commissioner for Human Rights in Nepal, Ms Lena Sundh. Ms Sundh informed that in April 2007, just prior to the AITPN's National Consultation, the UN Special Rapporteur on the situation of human rights and fundamental freedom of indigenous peoples, Mr Rudolfo Stavenhagen, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and two experts from the Sub-Commission on the Promotion and Protection of Human Rights visited Nepal in order to provide technical assistance to OHCHR in Nepal in the designing of its country-level policies on discrimination, with special emphasis on the situation of indigenous peoples, Dalits and other minorities, and to col-

lect information on the human rights situation of the various indigenous groups. They suggested that “it would be useful for leaders of indigenous peoples to look beyond the upcoming electoral process and consider more broadly possible strategies to ensure that the rights of indigenous peoples – not only civil and political rights – are recognized and respected in the future Nepal”. Ms Sundh further suggested that “*one such strategy is a national institution on indigenous peoples, which you are discussing here*”.

AITPN was acutely aware that the current post-conflict and transition situation provides an window of opportunity for the indigenous peoples. AITPN, therefore, had prepared a draft model law on a possible National Commission on Adivasi Janjatis based on the best elements taken from the existing National Institutions on Indigenous Peoples and National Human Rights Institutions in the Asia-Pacific region.

All the participants at the National Seminar unanimously agreed that there is indeed a need for a National Commission on Adivasi Janjatis. The draft model bill proposed by AITPN was revised based on recommendations of the participants. The final draft as agreed in the National Seminar has since been translated into Nepali.

Subsequently, Indigenous Nationalities Joint Struggle Committee (INJSC) and Nepal Federation of Indigenous Nationalities (NEFIN) which have been spearheading the movement of the indigenous nationalities included the establishment of a national commission for the indigenous janjatis as one of their main demands.

After 10 rounds of discussion, Minister for Peace and Reconstruction, Ram Chandra Poudel on behalf of the government of Nepal and Dr Om Gurung of NEFIN and and KB Gurung of INJSC representing the indigenous nationalities signed the 20-Point Agreement on 7 August 2007. The 20-Point Agreement, among others, provided for the establishment of a National Commission on the Janjatis.

The government of Nepal should immediately implement the 20-Point Agreement. In fact, Article 154 of the Interim Constitution already instructs the government of Nepal to establish such a National Institution. It provides that “The Government of Nepal may form necessary commissions to safeguard and promote the rights and interests of different sectors of the country including women, Dalits, indigenous ethnic groups, Madhesi, disabled, labourers or farmers. The provisions for the formation, functions, duties and powers of such commissions shall be as determined by the law.”

Should the government of Nepal and indigenous peoples consider establishment of such a National Institution on the Janjatis, the model law developed by AITPN provides the basis. The model law is not prescriptive but provides the elements that the government of Nepal and indigenous peoples might find useful.

If the government of Nepal is truly committed to indigenous peoples, such an institution beyond proportionate representation and ethnic self-rule will remain indispensable. ■

Paritosh Chakma  
Programmes Coordinator

## 2. Report of the National Seminar on the Role of National Institutions on Indigenous Peoples

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On 2-3 May 2007, Asian Indigenous and Tribal People's Network (AITPN) in cooperation with Kirat Welfare Society (KWS) organised a "National Seminar on Transition in Nepal and the Role of National Institutions on Indigenous Peoples" in Kathmandu, Nepal. About 70 indigenous representatives participated in the National Seminar, which, among others, addressed the present status of the indigenous peoples in Nepal, indigenous peoples' perspectives on the interim constitution and the issue of federalism, status of indigenous women in Nepal, the Role of National Institutions on Indigenous Peoples and ratification of the ILO Convention No. 169 and its relevance in Nepal.

ly to be doomed to suffer till arrival of another wave of reforms in the country.

Those who graced the National Seminar were H.E. Ms Lena Sundh, then Representative of the Office of the High Commissioner for Human Rights to Nepal; Dr. Jagadish Chandra Pokhrel, Vice Chairman of National Planning Commission of Nepal; Dr Chaitanya Subba, Member, National Planning Commission of Nepal; Mr Bijay Subba, Member of Parliament, Communist Party of Nepal-UML; Mr. Mitharam Biswakarma, Member of Parliament, Nepali Congress; Ms Sarina Gurung, Information Officer, National Foundation for Development of Indigenous Nationalities



In the post-conflict phase, each and every community is yearning for peace but at the same time, they also want higher stakes in the governance of the country. This is a critical period for the indigenous peoples of Nepal who need legal mechanisms to end historic injustice, oppression and discrimination and for protection of their rights, including political, economic and social, or else they are like-

(NFDIN); Mr. Parshuram Tamang, Member, UNPFII, Mr Chandra Kulung, General Secretary, Kirat Welfare Society; Dr Sukendu Debbarma, President, Asia Indigenous Peoples Pact; Mr. Dinesh Ghale, Vice Chairperson, Lawyers' Association for Human Rights of Nepalese Indigenous Peoples; Ms. Lucky Sherpa, President of Himalayan Indigenous Women Network; Dr

Om Gurung, Advisor, Nepal Federation of Indigenous Nationalities (NEFIN); Mr. Satish Budhamagar, Chairperson, Magarat Mukti Morcha, among others.

Speaking at the seminar, Ms Lena Sundh stated that the indigenous peoples “are among the poorest of this country’s (Nepal) poor”. She urged the indigenous leaders to look beyond the upcoming electoral process and consider more broadly possible strategies to ensure that all the rights of the indigenous peoples are recognized and respected in future. Establishing a “national institution on indigenous peoples” should be one such goal, she said. She enlightened the participants about the Paris Principles but warned that “No single model of national institutions can, or should, be recommended as the appropriate mechanism for all countries.” She suggested that national institutions must be developed taking into account “local cultural and legal traditions as well as existing institutions” while benefiting from the experiences of other nations’ institutions.

Dr. Jagadish Chandra Pokhrel, Vice Chairman of National Planning Commission of Nepal empathically stated that all the political parties must show “firm commitment” to protect the rights of the indigenous peoples in “their agenda as expressed in eight party minimum common agenda”. These commitments need to be operationalized and demonstrated with “some results in practice”. Dr Pokhrel stated that Nepal cherishes its diversity in “culture, language, and so many other aspects of human life” but expressed regret that “It took us lot of effort in this country to identify some of the almost extinct indigenous peoples and come up with immediate action” so that language, culture etc of the threatened indigenous peoples can be protected. “We must know clearly what we want to protect”, he said, adding that he was optimistic that “recommendations” of the seminar will be “really helpful for us to come up with national policies and programmes”.

Dr Om Gurung, Advisor to NEFIN, spoke on the “Perception of Indigenous Nationalities of Nepal Towards the Interim Constitution of Nepal-2063 and the Issue of Federal Democratic Republican State raised by the Nationalities”. According to him, there are several shortcomings in the Interim Constitution of Nepal. He stated that major issues like “right to self-determination, restructuring the state based on ethnic, territorial self-rule and proportionate representation based on ethnic population in the constituent assembly” have not been included in the interim constitution. The indigenous peoples are “highly marginalized” and have “very low and somewhere about to none” representation in services such as Executive, Judiciary, Education, Health, Civil Services and Army Services. The indigenous peoples have been “isolated from the national political life and mainstream of development” due to discriminatory policies of the government. Lack of decentralization of power “does not provide any opportunity and place” to the indigenous peoples to participate in state affairs. So, “restructuring of the state” is necessary, Dr Gurung asserted. He recommended “a federal state based on ethnicity, language and geographical area” instead of “a federal state based only on geographical areas”.

Mr. Dinesh Ghale, Vice Chairperson of Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples was of the opinion that the “conventional approach” was still practiced in the judiciary in Nepal and even the People’s Movements (both first and second) have not tried to make the judiciary “inclusive”. According to figures provided by him, Brahmin/Chetry represented 85% in Supreme Court, 79% in Appellate Court and 86% in District Courts while Indigenous peoples (except Newar) represented only 1.1% in Appellate Court, 1.3% in District Courts but none in the Supreme Court. Newar indigenous peoples represented 15% in the Supreme Court, 14% in Appellate Court and 9.7% in District Courts. He also stated that

there were only 1,578 Advocates and 1,683 Pleaders belonging to indigenous peoples (including Newar) who have received license from Nepal Lawyers' Council.

Ms. Lucky Sherpa, President of Himalayan Indigenous Women Network, in her paper, "Indigenous Women of Nepal-Issues and Challenges" stated that the indigenous women of Nepal have not received attention either from the government of Nepal or from the civil society groups, including the women's movement in Nepal. She regretted that despite constituting 37.5 percent of the total female population of Nepal, overall participation of indigenous women in political parties, in decision making bodies including the National Foundation for Development of Indigenous Nationalities (NFDIN) and even in indigenous peoples organisations is meager and negligible. The "NFDIN Constitution contains discriminatory clauses against indigenous women and the member organizations of NEFIN while proposing the names of indigenous representatives of NFDIN have nominated men." She also highlighted the discrimination faced by the indigenous women: "The services and facilities granted to women are only within the access of women who belong to so called high caste, have close relationship with people in power and have party affiliation and monetary power. With a few exceptions most indigenous women are deprived of such facilities. Indigenous women's participation in local elections, professional and administrative jobs, cabinet, parliament, judiciary etc is very low. Most of the women, who have been able to get in, belong to Bahun-Chhetri groups (with some exceptions of Newar women, who are indigenous). The result of such an imbalanced representation of the dominant caste Bahun-Chhetri in various decision making bodies have made adverse impact on their (IP women) identity, language, religion and culture." She further lamented that "Innumerable programmes related to women development and gender equality are being implemented in the country. But they do not

involve women from adivasi janajatis (indigenous nationalities). The women's movement is limited to the castes/communities who dominate the state affairs, so called high caste and the elite and to places where modern facilities are available. Indigenous women do not have control and access on the local resources and means."

Ms. Sarina Gurung, representative of National Foundation for Development of Indigenous Nationalities (NFDIN) of Nepal spoke about both the major achievements and shortfalls of the NFDIN. She identified several constraints including low budgetary allocation (only 3.3 crore), lack of proper infrastructure including absence of its own building, problem of implementation of the programmes which "are not matched" as per the Act and Regulations of NFDIN, failure to appoint Vice Chairperson and Member-Secretary since past 11 months, etc.

Analysing the performance of the NFDIN, Mr Chandra Kulung, General Secretary, Kirat Welfare Society stated that NFDIN was an absolute failure. He pointed out that NFDIN's failure was a result of lack of the essential components of good governance such as accountability, transparency, democratic practices, rule of law, decentralization of powers and prevalence of rampant corruption. He regretted that the indigenous representatives in the Governing Council of the NFDIN were excluded from having meaningful participation in the NFDIN. He rued that "The members of the governing council were not provided opportunities for serious discussion for over all development of the indigenous nationalities to bring them in mainstream development process." Mr. Kulung also accused the NFDIN of functioning in a secretive and suspicious manner due to preponderance of influence of the Line Minister i.e. the Minister of Local Development. He says, "In almost all instances, only the Chairman and Member Secretary of the Executive Committee of NFDIN were involved in decision making process keeping

aside the other members of Executive Committee nominated by NEFIN and the Governing Council. Annual Report of NFDIN is not made publicly available. After entering into some sort of mutual understanding with some clever members of the Governing Council, the Executive Officers of NFDIN impose their decision upon the other members who are usually the unsuspecting indigenous peoples' representatives." He further charged that the NFDIN was being run in an undemocratic manner. At the behest of some of the larger indigenous groups, NFDIN has not yet given separate recognition to more than 20 comparatively smaller indigenous groups and they are continued to be recognized within the larger groups.

Dr Sukendu Debbarma, President, Asia Indigenous Peoples Pact, expressed the view that the indigenous peoples are what they are today "because we have not been able to make space for ourselves". However, the States have now understood the very uniqueness of the indigenous peoples. A democratic country cannot do away with discrimination against indigenous peoples because "Neglected indigenous peoples would mean that a section of the citizens of that particular country are being neglected". Several countries in the region have established National Institutions on indigenous peoples such as Scheduled Tribes and Scheduled Castes Commission of 1989 of India, Indigenous Peoples Rights Act (IPRA) of Philippines, 1997, National Foundation for Indigenous Peoples of Nepal, 2002, and Aboriginal and Torres Strait Islanders Commission of Australia. Establishing institutions for the indigenous peoples is not enough. Therefore, the indigenous civil society must take pro-active role to make these institutions "very very viable".

AITPN submitted its model on a "National Commission on the Adivasis Janjatis of Nepal". The model law, among others, provided for constitution of a National Commission on the Adivasi Janjatis; criteria /qualifications of the members; proce-

cedure of appointment of chief commissioner and commissioners; procedure for filling up vacancies of chief commissioner /commissioners; resignation and removal of the chief commissioner or other commissioners; term of office of commissioners, terms and conditions of service of commissioners; vacancies, etc.; procedure to be regulated by the commission; officers and other staff of the commission; offices and departments of the commission; consultative advisory committee of the commission for ensuring participation of indigenous peoples in the decision-making, etc.

The model law elaborated the functions and powers of the commission; powers relating to inquiries; procedures for inquiry into complaints including statement made by persons to the commission; persons likely to be prejudicially affected to be heard; steps to be taken after inquiry; submission of annual and special reports of the commission.

The model law also provided for the establishment of the provincial commissions on the adivasi janjatis.

It also also dealt with finance, accounts and audit of the proposed commission, and miscellaneous issues like matters not subject to jurisdiction of the commission; constitution of expert sub-committees; protection of action taken in good faith etc.

The model law was discussed threadbare in Working Group sessions and specific recommendations were made by the Working Group. These recommendations of the Working Group were discussed in the plenary session and the draft final model law was drafted.

The draft final model law was thereafter translated into Nepali and circulated for comments, deletions, and additions etc to ensure participation of indigenous peoples who were not conversant in English and the final model law was adopted. ■

### 3. Statement by Ms Lena Sundh, Representative of OHCHR-Nepal

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**Delivered at the National Seminar, Transition in Nepal and the role of  
National Institutions on Indigenous Peoples**

Dear Friends,

**T**hank you for inviting me here today to take part in your Seminar on Transition in Nepal and the Role of National Institutions on Indigenous Peoples.

I am encouraged to see that the organizers have taken a broad approach to the situation of indigenous peoples in Nepal. I understand that during your deliberations you will be considering a variety of issues, such as ILO Convention 169 on Indigenous and Tribal Peoples, indigenous women's concerns and regional perspectives of national institutions on Indigenous Peoples, as well as the pressing current concern of participation in Nepal's peace process and, particularly, indigenous people's representation in the Constituent Assembly.

I don't think I need to go into detail for this audience about the status of indigenous peoples in Nepal. Most of the 59 officially recognized indigenous nationalities, and others not on that list, are among the poorest of this country's poor. Many were disproportionately affected by the decade-long conflict.

Supporting an end to the marginalization of Nepal's Janajati Adivasi – along with Dalits, Madheshis, ex-kamaiyas and other groups – has been one of three priorities of the Office of the High Commissioner for Human Rights

since it opened its doors in Nepal in May 2005. As the country moves forward in the post-conflict phase, this issue is attracting more of our attention.

I believe that many of you had a chance to meet with the two Special Rapporteurs and members of the Sub Commission on the Promotion and Protection of Human Rights who visited Nepal from Geneva last week. They came here to trade ideas with civil society and to then synthesize what they learned in those discussions in order to feed recommendations into the internal strategy that OHCHR-Nepal is developing to focus its work on discrimination and marginalization. We look forward to seeing the reports that they will present to the Human Rights Council and other UN bodies, and will share those with you as soon as it is possible.

Although we did not have much time to discuss the experts' findings with them before they left, one of the impressions that they shared with us is that many indigenous peoples organizations in Nepal are today preoccupied with political considerations. This is natural given the window of opportunity that exists in the current post-conflict phase and based upon the marginalization that you have faced for more than two centuries. At the same time, the experts suggested that it would be useful for leaders of indigenous peo-



ples to look beyond the upcoming electoral process and consider more broadly possible strategies to ensure that the rights of indigenous peoples rights – not only civil and political rights – are recognized and respected in the future Nepal. One such strategy is a national institution on indigenous peoples, which you are discussing here.

I have been asked to say something about the Paris Principles and how they might apply to such a national institution. As you might know, the Principles were adopted by the UN General Assembly in 1993 to provide guidance on the competence, responsibilities, independence, pluralism and methods of operation of national human rights institutions.

The Principles include provisions which set out (in Part B) that both the appointment process to a national human rights institution and its membership shall afford all necessary guarantees to ensure the representation of members of civil society involved in the protection and promotion of human rights. These include members of NGOs responsible for human rights and efforts to combat racial discrimination, trade unions and concerned social and professional organizations, such as associations of lawyers, doctors and journalists.

The Paris Principles also assert that a national institution should be provided with everything required for the smooth conduct of its activities, in particular adequate funding. The level of funding should enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect its independence.

Of course, these Principles are applicable in the case of Nepal's National Human Rights Commission (NHRC) and OHCHR-Nepal has repeatedly advocated that they be adhered to in order to fill the vacant positions of NHRC

Commissioners. Another point is vital, whether referring to the NHRC in particular or to any other national institution – it should not be regarded as a pie to be carved up among political parties.

Non-partisanship is fundamental to independent and effective commissions and other national institutions. However, this would not be maintained if members were to be associated with or identified as representing specific political parties. Instead, members or commissioners must represent and be responsible to, in this case, all of the indigenous people of Nepal regardless of their political affiliation.

In recent decades, the United Nations has been associated with the creation of numerous human rights institutions worldwide. One of the conclusions it has drawn from those experiences is that no single model of national institutions can, or should, be recommended as the appropriate mechanism for all countries. All nations can benefit from the experience of others, however national institutions must be developed taking into account local cultural and legal traditions as well as existing institutions.

In the field of indigenous peoples in Nepal, you have the five-year experience of the government's National Foundation for Development of Indigenous Nationalities (NFDIN) to draw lessons from and the fast-rising aspirations of millions of indigenous people to guide you.

You can also be assured of the support of the national and international human rights communities, which are anxious to see Nepal's indigenous peoples and other marginalized groups in positions that will allow them to participate to the full extent of their abilities in the political, economic, social and cultural life of this country. ■

Thank you.

## 4. A study on the National Foundation for Development of Indigenous Nationalities

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**T**n 2002, the government of Nepal established the National Foundation for Development of Indigenous Nationalities through a parliamentary Act for upliftment of indigenous peoples of Nepal. There are no minimum standards for the establishment of National Institutions on Indigenous Peoples. Nor these institutions have any serious engagement with indigenous peoples and United Nations bodies dealing with indigenous peoples. However, the indispensability of these national institutions for realisation of the rights of indigenous peoples is beyond doubt.

Asian Indigenous and Tribal Peoples Network (AITPN) undertook the study to evaluate the effectiveness of the NFDIN. In the absence of any guidelines on the establishment of the National Institutions on Indigenous Peoples, AITPN used the United Nations Paris Principles on National Institutions and the Acts establishing the National Commission on Indigenous Peoples of the Philippines and the National Commission on the Scheduled Tribes of India to evaluate NFDIN.

AITPN examined NFDIN's autonomy - legal, financial, composition and through appointment and dismissal procedures; its powers, functions and jurisdiction; accessibility of NFDIN to indigenous peoples; level of awareness among the indigenous peoples about the NFDIN; level of cooperation between the NFDIN and indigenous peoples; operational efficiency of the NFDIN including staffing, representative nature and impartiality, and procedures for establishing accountability of NFDIN.

The aim of the study was to make appropriate recommendations for strengthening of the NFDIN by addressing its shortcomings.

However, as this study shows, the NFDIN is so weak in all the areas that AITPN had to recommend the repeal of the National Foundation for Development of Nationalities Act of 2002 in order to establish a new National Commission for Adivasi Janjatis. The NFDIN was useful for ensuring acceptance of indigenous peoples in Nepal but its mandate has no relevance in the post conflict Nepal. A new institution must be established to ensure the rights of indigenous peoples in Nepal and such an institution must comply with the Paris Principles and draw the best elements from the existing National Institutions on Indigenous Peoples.

### **I. Failure to include the excluded indigenous peoples**

Kiraties are one of the most ancient peoples of Nepal residing in their ancestral territories the eastern Himalaya range from time immemorial. Presently, they are mostly known according to their own distinct mother languages and cultures.

According to Chandra Singh Kulung of the Kirat Welfare Society, at the time of the adoption of the NFDIN Act, many Kirati sub-groups were not included in the list of indigenous peoples of Nepal. While the Kirati sub-groups such as the Limbu, Yakkha, Sunuwar and Hayu having a population of population of 473,457 in 2003 were recognized as indigenous peoples, about two dozens Kirati sub-groups have still not been recognized as indigenous peoples. These excluded Kirati sub-groups are (1) Kulung, (2) Chamling, (3)

Nachhiring, (3) Bahing, (4) Lohorung, (5) Bantawa, (6) Yamphu, (7) Thulung, (8) Khaling, (9) Sangpang, (10) Atpahare, (11) Tilung, (12) Puma, (13) Jerung, (14) Mewahang, (15) Koyu, (16) Dumi, (17) Dungmali, (18) Umbule and (19) Chhathare. The number of these excluded indigenous peoples is over 800,000.

Article 1.1 and 1.2 of International Labour Organization Convention No.169 relating to indigenous peoples refers to self-identification. However, both NFDIN and NEFIN, the recognized representative organisation of indigenous peoples under the NEFIN Act, have failed to take measures to include these excluded indigenous peoples. This also implies that these indigenous peoples shall not have ethnic representation in the Constituent Assembly of Nepal.

## II. Mandate: A governmental agency

With respect to mandate, Principle 2 of the United Nations Principles on National Human Rights Institutions (The Paris Principles) provides that “A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence”.

An examination of the National Foundation for Development of Indigenous Nationalities Act of 2002 (hereinafter referred to as NFDIN Act) shows that the NFDIN certainly does not meet the minimum basic standards as provided under the Paris Principles.

Under Section 5 of the NFDIN Act, NFDIN has the following mandate:

1. to make overall development of the indigenous nationalities by formulating and implementing the programs relating to the social, educational, economic and cultural development and upliftment of indigenous nationalities;

2. to preserve and promote the language, script, culture, literature, arts, history of the indigenous nationalities;
3. to preserve and promote the traditional knowledge, skill, technology and special knowledge of the indigenous nationalities and to provide assistance in its vocational use;
4. to cause the indigenous nationalities to be participated in the mainstream of overall national development of the country by maintaining a good relation, goodwill, and harmony between different indigenous nationalities, castes, tribes and communities;
5. to provide assistance in building an equitable society by making social, economic, religious and cultural development and upliftment of indigenous nationalities.”

The objectives as provided in Section 5 only provides for “promotion and preservation” of the economic, social and cultural development of the indigenous peoples without any provision for “protection” of their rights.

Therefore, NFDIN failed to address the violations of the rights of indigenous peoples. Even those who lobbied for creation of such an institution remain unaware about the activities of NFDIN.

### a. Absence of rights-based approach

The main flaw of the NFDIN Act is the absolute lack of rights based approaches. The objectives provided under Section 5 which define the mandate of the NFDIN Act only provides for “promotion and preservation” of the social, cultural, economic and educational development of the indigenous peoples. Similarly, Section 6 of the NFDIN Act relating to “functions, duties and powers of the Foundation” has no reference to rights provided under the Constitution of Nepal and international human rights law. Nor is there any reference to land rights which is crucial

for social, economic and cultural development of indigenous peoples.

The NFDIN Act is also equally silent about the civil and political rights of the indigenous peoples which are crucial for realization of economic, social and cultural rights.

**b. Most powerless National Institution**

The NDFIN is the most powerless National Institution in comparison to the National Human Rights Commission or National Dalit Commission of Nepal.

A national institution must have the power to intervene against violations of rights (commission) and failure to take appropriate measures (ommission). It must be able to investigate and have the powers to (a) compel appearance of any person including Government officer, agencies etc before it for recording his/her statement and information within his knowledge; (b) compel appearance of witnesses and examine them; (c) order the production of any document; (d) compel production of any document or copy thereof which may be in the custody of any governmental or public office; (e) examine evidence; (f) carrying out or causing to be done an on-the-spot inspection, ordering the production of any physical evidence etc.

The Principle 3(b) of the Paris Principles provides that any national institution shall “(b) hear any person and obtain any information and any documents necessary for assessing situations falling within its competence.”

However, NFDIN has not been provided with any such power or authority. It can neither receive a complaint nor can it initiate any corrective/remedial action on its own (suo motu) in cases of violations of the rights as provided in the objectives of NFDIN under Section (5)(1). Therefore, NFDIN does not have the subpoena powers.

This is despite the fact that National Foundation for Development of Indigenous

Nationalities was established later than the National Human Rights Commission. The National Human Rights Commission established under the Human Rights Commission Act of 1997 have the powers to conduct inquiries and investigations upon a complaint from the victim or any person on his behalf or upon information received from any source, or on its own initiative.

The NHRC can specifically investigate (1) violation of human rights and abetment thereof, and (2) carelessness or negligence in the prevention of violations of the human rights by any person, organization or authority concerned.<sup>1</sup>

The NHRC also has the subpoena powers and is therefore able to compel co-operation of others, including the Government agencies in its inquiry and investigation.

Even the National Dalit Commission (NDC) which was not created by any statute has a broader mandate than that of the NFDIN. Among others, the mandate of the NDC includes to suggest timely changes in legal and policy arrangements for Dalit rights, make recommendations to implement international instruments to which Nepal is a party, monitor and coordinate NGOs on dalit upliftment, launch programmes on social awareness to end social discrimination and untouchability, receive petitions and act as per the existing law, and draft a bill to make legal arrangements concerning the National Dalit Commission.<sup>2</sup>

Unlike the National Human Rights Commission or the National Dalit Commission which can issue directions to the governments, Section 22 of the NFDIN Act provides that Nepal Government may give necessary directions to the NFDIN!

**c. NCDN to NFDIN:  
Regression of mandate**

The National Foundation for Development of Indigenous Nationalities (NFDIN) was estab-

Under Section 7 of the NFDIN Act, the Governing Council comprises of 93 members from diverse background.

- |     |   |               |
|-----|---|---------------|
| (a) | Prime Minister  | Chairman      |
| (b) | Minister/State Minister of the Ministry of Local Development  | Co-chairman   |
| (c) | One person nominated by the chairman of the council from among three indigenous nationalities recommended by a recommendation committee formed under sub-section (2) from among the persons who have made remarkable contribution to the upliftment and development of indigenous nationalities,  | Vice Chairman |
| (d) | Six persons on party representative basis as prescribed from among the indigenous nationalities members representing in the House of Representatives,   | Member        |
| (e) | Three indigenous nationalities members of the National Assembly as prescribed having regard to the structure of the National Assembly   | Member        |
| (f) | Vice-chancellor of the Royal Nepal Academy or a member designated by him  | Member        |
| (g) | Member, National Planning Commission, (looking after the concerned matter)  | Member        |
| (h) | Secretary, Ministry of Local Development  | Member        |
| (i) | Secretary, Ministry of Finance  | Member        |
| (j) | Secretary, Ministry of Culture, Tourism and Civil Aviation  | Member        |
| (k) | Secretary, Ministry of Education and Sports   | Member        |
| (l) | Persons nominated by the Co-chairman, on recommendation of the federation of the indigenous nationalities out of the unions and associations of the indigenous nationalities referred to in the schedule affiliated to the federation, one person from each indigenous nationalities and in the case of indigenous nationalities, if there exists any, not affiliated to the federation of indigenous nationalities one person each from such indigenous nationalities, | Member        |
| (m) | Ten women nominated by Nepal Government two from each development region from among the indigenous nationalities women who have contributed to the upliftment of the indigenous nationalities,  | Member        |

(n) Two persons nominated by Nepal Government from among the tradesman, industrialists and donor of the indigenous nationalities community,	Member
(o) Members of the executive committee	Member
(p) Person nominated by the Co-chairman of the council on recommendation of the Vice-chairman of the council from among the persons of indigenous nationalities who have made special contribution to the upliftment of indigenous nationalities”.	Member- secretary

lished in 2002 to provide for a permanent institution for the overall development of the indigenous peoples. The NFDIN Act was brought to create a permanent institution and to replace the erstwhile National Committee for Development of Nationalities (NCDN) created in 1996 to address the concerns of the indigenous peoples.

A comparison of the mandates, powers and functions of both NFDIN and NCDN shows that the NFDIN is indeed weaker than the NCDN. There was a regression of power and functions.

Among others, the NCDN functions were (i) preparation of profiles of 61 ethnic groups; (ii) removal of such words, sentence and essence that humiliates and dominates or harasses the dignity of the indigenous peoples from the curriculum and text books of educational institutions; (iii) revitalizing the highly marginalized indigenous peoples; (iv) to get patent rights over traditional skills technology of the indigenous peoples; (v) to implement the International conventions and Declarations; (vi) to assist in Cultural Projects of the indigenous peoples; and (vii) to emphasize on institutional development. The NCDN's functions reflected rights based approaches and were more progressive in nature.

When the NFDIN Act was enacted, Sections 5 and 6 only provided for development of the indigenous peoples in respect of their social

and cultural rights. The implementation of the international conventions and declarations was deleted!

### III. Composition

#### a. Governing Council: Too large to be effective

In its report of 1996, “*Establishment of the Foundation for the Upliftment of Nationalities*” the Task Force proposed only 27 members of the Governing Council. It was provided that within that 27 members, 2/3rd members should be indigenous peoples. There was no proposal for representation from the indigenous communities as provided Section 8(1)(l) of the NFDIN Act. However, following intense lobbying by the indigenous peoples, the Government accommodated one representative from each of the 59 recognized indigenous communities in the Governing Council.

The total number of Governing Council member is 93. Under Section 8(3) of the NFDIN Act, at least half of the total of 93 members i.e. 47 members of the Governing Council shall have to be present in order to form quorum for a meeting of the Council.

The Governing Council is so disproportionately large that it rendered the NFDIN ineffective and useless. Any major decision of the Governing Council should be passed in any of the only two annual meetings in which at least 50 percent of the Members are present.

**b. Selection of the members: Prime Minister to report to the Local Development Minister**

Principle 3 of the Paris Principles on National Human Rights Institutions states that “In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution’s membership is ensured.”

There are no criteria for selection of the 59 indigenous members of the Governing Council of NFDIN. Neither the NFDIN Act nor the Rules of Procedures define the criteria or procedure for selection of the indigenous members.

The government members of the Governing Council are Secretaries to the Government of Nepal and being employees of the government, they cannot play any independent role. In fact, the overwhelming presence of the government officials ensured that there is no independence.

The Chairman of the Governing Council is the Prime Minister and co-Chairman is the Minister/State Minister of the Ministry of Development. In its Report, “Establishment of the Foundation for the Upliftment of Nationalities”, the Task Force proposed the Prime Minister as the Chairman of the Governing Council to ensure coordination and cooperation from the concerned ministries. It was hoped that the Prime Minister will bring necessary authority for enforcing the decisions of the Foundation on the government. However, no Prime Minister ever attended any meeting of the Governing Council of the NFDIN.

What is more bizzare is the Section 23 of the Act which mandatorily requires the NFDIN to liaise with the Government of

Nepal through the Ministry of Local Development. Therefore, the NFDIN’s Governing Council which is headed by the Prime Minister grotesquely makes itself subservient to the Local Development Minister!

**c. Pluralism does not include gender!**

On composition and guarantees for independence and pluralism, Principle 1 of the Paris Principles states that “The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- (b) Trends in philosophical or religious thought;
- (c) Universities and qualified experts;
- (d) Parliament;
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).”

The Governing Council comprising of 93 persons should ideally ensure pluralism. But there are no procedures to ensure representation from different fields which fall within the mandate of NFDIN.

There is no mandatory provision for gender representation. Consequently, majority of the Governing Council are men.

#### IV. Resources

Principle 2 of the Paris Principles provides that “The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.”

The proposal on “*NFDIN Institutional Strengthening*” submitted by the NFDIN to the Department for International Development (DFID) of the United Kingdom lucidly explains the acute lack of financial and human resources of the NFDIN and how it has caused ineffectiveness of NFDIN.

The NFDIN in its proposal stated:

“NFDIN is a newly established institution facing many challenges ...It has limited financial, human, material, and informational resources and is working amidst serious policy gaps and inconsistencies concerning ethnic issues. Although it has received a reasonable amount of government funding it lacks funds for institutional development including training its current staff and the staff it plans to recruit. Delays in approving the foundation’s recently drafted rules are preventing the recruitment of much needed staff. It particularly lacks high level officer staff with only one out of the planned nine first and second class gazetted officers in post. Most governing council members, especially the IPO representatives, have a limited capacity to carry out their responsibilities and influence decision-makers. Also, it has yet to establish an out of Kathmandu presence, as envisaged in the government

policy document, while it is focusing on building up its central presence.

Lack of human and financial resources has led to the foundation’s main problems of:

- lack of strategic planning and unsatisfactory short term planning;
- lack of capacity to manage and monitor programmes and projects;
- poor monitoring and inadequate information management;
- limited policy input to the government;
- weak functional linkages to encourage line ministries, local government and other governmental and donor agencies to work to benefit janajatis; and
- lack of initiatives to empower IPOs.”

There is no doubt that the NFDIN has been provided very little resources.

#### a. Lack of financial resources

The meager amount of budgetary allocation received annually by the NFDIN explains as to why it has failed. The annual budgetary allocation to NFDIN was Nepalese Rupees (NPR) 16,950,000 during the Fiscal Year 2002-2003; NPR 22,250,000 during the Fiscal Year 2003-2004; NPR 24,700,000 during the Fiscal Year 2004-2005; NPR 33,000,000 during the Fiscal Year 2005-2006; and NPR 33,000,000 during the Fiscal Year 2006-2007.

However, even the same would be much lesser if it is calculated on the basis of the grant actually released to the NFDIN. The budgetary allocations have not been released fully by the Ministry of Finance. NFDIN received only NPR 5,650,000 during 2002-2003; NPR 20,950,000 during 2003-2004; NPR 22,411,000 during 2004-2005; and NPR 26,143,000 during 2005-2006; and only NPR 6,357,000 so far for the current fiscal year.

<b>FY</b>	<b>Approved</b>	<b>Actually released</b>
2002-2003	16,950,000	5,650,000
2003-2004	22,250,000	20,950,000
2004-2005	247,00,000	22,411,000
2005-2006	33,000,000	26,143,000

The government does not even provided approved grants. ... Calculate how much was not provided.

<b>Budget Allocated for NCDN/NFDIN</b>				
<b>Nepalese Fiscal Year</b>	<b>English Year</b>	<b>Budget Allocated</b>	<b>Population of I/Ns(IPs)</b>	<b>Per Head Budget</b>
053/54	1996/97	2300000		
054/55	1997/98	6300000		
055/56	1998/99	7000000		
056/57	1999/00	15000000		
057/58	2000/01	15000000	8,272,551	1.81
058/59	2001/02	15000000	8,458,683	1.77
059/60	2002/03	16950000	8,649,004	1.96
060/61	2003/04	22250000	8,843,606	2.52
061/62	2004/05	24700000	9,042,588	2.73
062/63	2005/06	33000000	9,246,046	3.57
063/64	2006/07	33000000	9,454,082	3.49
<b>Total</b>		<b>190500000</b>		

Note: Populations are projected with 2.25% annual growth rate

The government seldom provides the approved grant.

During the Fiscal Year 2002-2003, the NFDIN received only NPR 5,650,000 against the approved annual grant of NPR 16,950,000.

During the Fiscal Year 2003-2004, it received only NPR 20,950,000 against the approved annual grant of NPR 22,250,000.

During the Fiscal Year 2004-2005, it received only NPR 22,411,000 against the approved annual grant of NPR 247,00,000.

During Fiscal Year 2005-2006, it received only NPR 26,143,000 against the approved annual grant of NPR 33,000,000.

During the Fiscal Year 2006-2007, the Ministry of Finance approved only NPR 33,000,000 which is only 47.14 per cent of the annual budget of NPR 70,000,000 proposed by the NFDIN. Out of the total approved annual budget, NFDIN received only NPR 6,357,000 so far.

According to Mr Chandra Kulung of Kirat Welfare Society it is simply not possible for NFDIN to accomplish its objectives given the

lack of adequate funds. Projected at 2.25% annual growth, the indigenous people's population was 8,649,004 during 2002-2003 and the total budgetary allocation was mere NPR 16,950,000. Therefore, budgetary allocation for each indigenous people was only NPR 1.96. Similarly, per head budgetary allocation was only NPR 2.52 for 8,843,606 indigenous people during 2003-2004; NPR 2.73 for 9,042,588 Indigenous peoples during 2004-2005; NPR 3.57 for 9,246,046 indigenous peoples during 2005-2006; and NPR 3.49 for 9,454,082 during 2006-2007.

Apart from the above funding by the Government of Nepal, NFDIN submitted a proposal titled, "*NFDIN Institutional Strengthening Project*" to the DFID for project management, equipment support, management capacity development and increasing the role for policy influence, monitoring and providing services. DFID approved NPR 2,927,219 against the proposed grant of NPR 46,743,073.00.

#### **b. Lack of personnel**

The NFDIN in its proposal to DFID accepted that "Most Governing Council members, especially the representatives from indigenous peoples' organizations, have a limited capacity to carry out their responsibilities and influence decision-makers."

The National Foundation's Executive Committee, which is the implementing authority, is chaired by the Governing Council's Vice-chairperson. The Vice-chairperson is assisted by the Member Secretary and three other Members of the Executive Committee. The posts of the Vice-chairperson and Member Secretary are full time executive posts. However, for the last about one year, both these post has been lying vacant and the administration of NFDIN is being run by a junior officer of the rank of a Deputy Secretary, who by any yardstick does not have the required experience, expertise and influence.

As of July 2004, NFDIN had only 26 staff, all of whom were hired on temporary basis while it needed at least 52 staff for normal functioning. Because of the delay in approving its Rules of Procedure by the Governing Council, no staff could be appointed. It had only one high level officer against a planned strength of nine posts of first and second class gazetted officers. Till the approval of its Rule of Procedures in 2006, the functions of the National Foundation were carried out by temporary staffs.

The situation has not improved much even after approval of the Rules of Procedures in 2006. The total sanctioned staff strength of the NFDIN is 52. These includes 4 posts of First Class Officer, 5 posts of Second Class Officer, 10 posts of Third Class Officer, 15 posts of 5th Level Assistants, 3 posts of 4th Level Assistant, and 15 other uncategorized posts. Only 2 posts of First Class Officer in the Administrative Department have been filled leaving 2 such posts in the Technical Department vacant for the last five years. Similarly, 1 post i.e. Senior Research officer out of the 2 posts of Second Class Officers in Technical department; 7 posts of Third Class Officer – 2 out of 7 in Administrative department and 2 out of 3 in the Technical department; all 3 posts of 5th level Assistant in Technical department; and 1 other uncategorized post are lying vacant as on date. The lack of staff has been seriously affecting the functions of the NFDIN thereby depriving the indigenous peoples from even those limited benefits envisaged under the NFDIN Act.

According to a paper submitted at the "National Seminar: Transition in Nepal and the Role of National Institutions" by Ms. Sarina Gurung, Information Officer of NFDIN, the process of regularization of the staff has not proceeded smoothly.

#### **c. Lack of autonomy over resources**

The autonomy over resources also, to a large extent, determines independence of any National Institution. If the procedures for

approval or sanction of resources - finance and staff – are arbitrary or dependent upon whims and fancies of the Government / a particular ministry of the Government, any National Institution can become meaningless.

Section 16 of the NFDIN Act provides –  
 “16. Fund of the Foundation

1. The Foundation shall have its separate fund.
2. The following amounts shall be credited to the fund:-
  - amount received from Nepal Government,
  - loan amount received from a foreign government or international union and association,
  - donation, assistance, grant or any other amount to be received from a foreign government or international union and association or person,
  - amount received as donation, assistance from a person or association,
  - amount received for the service made available by the foundation, and
  - amount received from any other sources.
3. The Foundation shall be required to obtain the approval of Nepal Government to receive the amount under clause (b) of sub-section (2) and shall be required to give pre information to Nepal Government to receive the amount under clause (c).
4. All expenses to be incurred by the Foundation shall be borne from the fund under sub section (1).
5. All amounts to be received by the Foundation shall be deposited into a bank by opening an account in the name of the Foundation in such bank.
6. The operation of the account of the fund of Foundation shall be as prescribed”.

Sub-section 1 of the section 16 provides that the NFDIN shall have its separate fund but this does not necessarily mean having financial autonomy. ‘Separate fund’ is meant only for its internal accounting and management. There is no separate fund for NFDIN from the consolidated fund of Nepal. The size of allocation of annual grant of the NFDIN depends upon the decision of the Government. The Ministry of Finance normally allocates depending upon the extent of utilisation or disbursement and regularities in clearances.

In its Report of 1996 titled, “*Establishment of the Foundation for the Upliftment of Nationalities*”, the Task Force stressed upon the need for financial autonomy of the National Foundation through self-reliance. To achieve financial sustainability, Task Force proposed that “NFDIN should create a Trust Fund and accumulate at least NPR 10 billion with in five years a Trust Fund”.

But none of the recommendations made by the Task Force was implemented.

#### **d. Comparison with the NHRC**

Section 15 of the Human Right Commission Act of 1997 which provides for “Financial Management” of the NHRC does not prescribe any fixed amount of money that the NHRC would be sanctioned annually. The NHRC is empowered to obtain as much resources and means from different agencies including national and international donors by way of grants as are required for the smooth performance of its functions. To obtain such means and resource, it does not require approval of the Government of Nepal.

However under Section 16 of the of the NFDIN Act, the NFDIN receives a fixed amount of annual grant irrespective of whether the same is adequate or not to effectively carry out its functions. In addition, under 16(3) the NFDIN must take approval from the government to receive donation,

grant, assistance, consultancy fees from national and international donors.

### V. Physical Accessibility

With regard to the aspect of physical accessibility of the NHRIs, the Paris Principles provides, “within the framework of its operation, the national institution shall: Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions.”

There is only one office i.e. the Headquarters of the NFDIN situated at Kathmandu. Although Section 15 of the NFDIN Act empowers the NFDIN to constitute and delegate powers to Sub-Committees or task force, no such Sub-Committee or Task Force has been constituted nor has any regional office been established. In the absence of any regional office, the indigenous peoples from all the five regions have to come to Kathmandu although it is very far off and costly.

### VI. Awareness among indigenous peoples on the NFDIN

Public education/dissemination of information on the rights of the victims or the probable victims is one of the important responsibilities of NHRIs. The Paris Principles provides: “A national institution shall, inter alia, have the following responsibilities: .....(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.”

In sub-sections 4 and 5 of Section 6, the NFDIN Act provides:

“6. To attain the objectives under Section 5, the functions, duties and powers of the Foundation shall be as follows:

1. to publish the history and literature of indigenous nationalities (sub-section 4);

2. with the assistance of other bodies concerned with language, literature, to prepare and publish or cause to be published the dictionary of the language of indigenous nationalities(sub-section 5);
3. to establish archives and museum that give identity of the language, culture, history, tradition of the indigenous nationalities(sub-section 6);
4. to establish a school that teaches the language of the indigenous nationalities at least up to primary level (sub-section 7);and
5. to collect and manage information pertaining to indigenous nationalities(sub-section 9)....”.

There are 59 indigenous nationalities that have been identified and recognized as “Adivasi janjatis” as provided in Schedule I of the NFDIN.

But there are only seven published books titled – *An Introduction to Tharu Culture; A Basic Baram-Nepali-English Dictionary; Adibasi Janajati Mahila Sambhabdhi Kanooni Shaksharta Pustika; Loponmukh Adibasi Janajatika Nimit Ayojit Abolokan Bharman-2062; Vishwa Adibasi Dashak:Upalavdhi; Samassya Ra Samadhanka Upaayharu; Notes on Kusunda Grammar* (a language isolated of Nepal);

and *Nepal Adibasi Janajati Matribhashako Sthiti:Ek vishleshan* under the section “NFDIN Published Books” available in its official website. Majority of the Adibasi Janajatis are unaware of the activities of the NFDIN.

Because of its narrow and incomplete mandate, the NFDIN is also not empowered to highlight the violations of civil and political rights of the Adibasi Janajatis.

## VII. Conclusion

Among the achievements of NFDIN, the only visible one is the recognition of the existence of indigenous peoples/nationalities in Nepal. The NFDIN has miserably failed to accomplish any of its objectives as provided in Section 5 of the NFDIN Act.

The National Foundation for the Development of Indigenous Nationalities cannot be considered as a national institution under any yardstick. Apart from pluralistic composition of its members, the NFDIN Act does not conform to any of the other basic requirements provided under the Paris Principles.

The NFDIN has neither the mandate of a national institution aimed at protecting and promoting the rights nor autonomy over resources nor does it have the required expertise to effectively protect and promote the rights of indigenous peoples. It merely serves as an instrument of the government to coopt indigenous leaders. It is not mandated to protect and promote the rights of the Janjatis.

Hence, a weak institution like National Foundation for Development of Indigenous Nationalities should not have any place in the post conflict Nepal. ■

# 5. Model law on a National Commission on the Adivasi Janjatis of Nepal

## Adopted at the National Seminar on Transition in Nepal and the Role of National Institutions on Indigenous Peoples

(An Act further to amend Interim Constitution of Nepal of 2007)

**A**n Act to provide for the establishment of an autonomous “National Commission on the Adivasi Janjatis” in Nepal for better protection and promotion of their rights and for matters connected therewith or incidental there to.

### Chapter I:

#### PRELIMINARY

##### 1. Short title, extent and commencement

- (1) This Act may be called the National Commission on the Adivasi Janjatis Act of 2007.
- (2) It extends to the whole of Nepal.
- (3) It shall be deemed to have come into force on the .....th day of ....., 2007.

##### 2. Definitions

- (1) In this Act, unless the context otherwise requires-
  - (a) “Recommendation Committee” refers to appointing committee under Section 5 of the Act.
  - (b) “Indigenous peoples” refers to indigenous nationalities recognized by national and international laws under practiced criteria
  - (c) “Chief Commissioner” means the Chief Commissioner of the Commission;

(d) “Commission” means the National Commission on the Adivasi Janjatis under section 3;

(e) “Rights” means the rights of indigenous peoples stipulated under national and international human rights instruments;

(f) “Commissioner” means a Commissioner of the Commission; and

(g) “Notification” means a notification published in the official Gazette;

### Chapter II:

#### THE NATIONAL COMMISSION ON THE ADIVASI JANJATIS

##### 3. Constitution of a National Commission on the Adivasi Janjatis

- (1) The Government of Nepal shall constitute an autonomous body to be known as the National Commission on the Adivasi Janjatis to protect, promote and defend human rights, fundamental freedoms and other rights and interests of the indigenous peoples with due regard to their beliefs, customs, traditions and institutions and shall exercise the powers conferred upon, and perform the functions assigned to it, under this Act.
- (2) The Commission shall consist of:
  - (a) Chief Commissioner and
  - (b) eight other Commissioners.

- (3) There shall be a Secretary-General who shall be an indigenous person. He will be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions as the Commission may delegate to him. The Secretary General need not be a government officer and should possess experiences at national and international level.
- (4) The headquarters of the Commission shall be at Kathmandu and the Commission may establish offices/regional offices at other places in Nepal.

#### 4. Criteria /Qualifications

(1) The Chief Commissioner and the Commissioners must be:

- (a) Nepalese citizens;
  - (b) bonafide members of indigenous nationalities as recognized under the law;
  - (c) experienced in indigenous peoples' issues and have worked for at least 7 years with an indigenous community and/or any government agency involved in indigenous peoples' issues and holds at least a bachelor degree;
  - (d) have the ability, integrity and standing for selflessness to the cause of justice for the indigenous peoples.
- (2) The composition of the Commissioners shall reflect the diversity of the indigenous peoples including equal representation from three different regions respectively mountain region, hill region and Terai region.-
- (3) The Commission shall have at least 50% women members whose appointment shall reflect the geographical diversity;

(4) The Commission shall also have at least one retired judge of Nepal as a Commissioner who does not have to belong to an indigenous community.

#### 5. Procedure of appointment of Chief Commissioner and Commissioners

(1) The Chief Commissioner and Commissioners shall be appointed by the Head of State on the recommendation of the "Recommendation Committee" consisting of the following members:

- (a) The Prime Minister
- (b) Speaker of the National Assembly
- (c) Leader of the Opposition in the National Assembly
- (d) Three representatives of Advisory Consultative Committee which shall for the first term be constituted by the Governing Council of the National Foundation for Development of Indigenous Nationalities (NFDIN).

The Recommendation Committee members shall appoint a Chairperson among themselves and two-third members shall form the quorum.

(2) The procedures of receiving the nomination by the Recommendation Committee shall be as under:

- (a) The Secretary General of the National Commission on the Janjati Adivasis shall issue a notification inviting nominations to fill up the vacant posts of Chief Commissioner and other Commissioners, and for appointment for the first term, Director of NFDIN shall serve as the Secretary of the Recommendation Committee;
- (b) Such invitation for nomination shall be pasted on the notice board of the Commission, notified through publica-

tion in all national newspapers of Nepal and other communication systems like internet;

- (c) The period of filing nomination shall be at least one month from the date of the notification;
- (d) After the expiry of the date of filing nominations, the Secretary General shall issue a public notice inviting comments from the indigenous peoples (individuals and organizations) on candidature of all the nominees and the details of the nominees including names, address, educational qualifications, work experience etc. before placing the nominations for consideration of the Recommendation Committee and the information pertaining to all the nominees shall be made public;

**6. Procedure for filling up vacancies of Chief Commissioner /Commissioners**

- (1) In case of resignation or removal according to Clause 7 provided under the Act, the procedure for filling up the vacancy must be completed within three months after resignation or removal of the Chief Commissioner or any Commissioner;
- (2) In case of retirement or completion of the terms of office of the Chief Commissioner/any other Commissioners, the procedure for filling up the vacancy be completed prior to the retirement or completion of the term of the concerned Chief Commissioner/ Commissioners;

**7. Resignation and removal of the Chief Commissioner or other Commissioners**

- (1) The Chief Commissioner or any Commissioner may, by notice in writing under his/her hand addressed to the Head of State, resign his/her office.
- (2) Subject to the provisions of sub-section (3), the Chief Commissioner or any other

Commissioners shall only be removed from his/her office by the initiative of the Recommendation Committee or upon recommendation by any indigenous community on the ground of proven misbehaviour or incapacity after the Supreme Court, on reference being made to it by the Recommendation Committee, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chief Commissioner or such other Commissioner, as the case may be, ought on any such ground to be removed.

- (3) Notwithstanding anything in sub-section (1), the Head of State on the advice of the Recommendation Committee may by order remove from office the Chief Commissioner or any other Commissioner if the Chief Commissioner or such other Commissioners, as the case may be;
  - (a) is adjudged an insolvent; or
  - (b) engages during his/her term of office in any paid employment outside the duties of his/her office; or
  - (c) is unfit to continue in office by reason of infirmity of mind or body; or
  - (d) is of unsound mind and stands so declared by a competent court; or
  - (e) is convicted and sentenced to imprisonment for an offence involves moral turpitude.

**8. Term of office of Commissioners**

- (1) A person appointed as Chief Commissioner shall hold office for a term of five years from the date on which he/she enters upon his/her office.
- (2) A person appointed as a Commissioner shall hold office for a term of five years from the date on which he/she enters upon his/her office and shall be eligible

for re-appointment for another term of five years.

**9. Commissioner to act as Chief Commissioner or to discharge his/her functions in certain circumstances**

- (1) In the event of the occurrence of any vacancy in the office of the Chief Commissioner by reason of his/her death, resignation or otherwise, the Commissioners can authorize one of the Commissioners to act as the Chief Commissioner until the appointment of a new Chief Commissioner to fill such vacancy.
- (2) When the Chief Commissioner is unable to discharge his/her functions owing to absence on leave or otherwise, such one of the Commissioners may be authorized to discharge the functions of the Chief Commissioner until the date on which the Chief Commissioner resumes his/her duties.

**10. Terms and conditions of service of Commissioners**

The salaries and allowances payable to, and other terms and conditions of service of the Commissioners shall be such as may be prescribed by the government of Nepal. Provided that neither the salary and allowances nor the other terms and conditions of service of a Commissioner shall be varied to his/her disadvantage after his/her appointment.

**11. Vacancies, etc., not to invalidate the proceedings of the Commission**

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

**12. Procedure to be regulated by the Commission**

- (1) The Commission shall meet at such time and place as the Chief Commissioner may think fit.

- (2) The Commission shall regulate its own procedure.
- (3) All orders and decisions of the Commission shall be audited by the Secretary-General or any other officer of the Commission duly authorized by the Chief Commissioner.

**13. Officers and other staff of the Commission**

- (1) The Government of Nepal shall make available to the Commission:
  - (a) an officer who shall be an indigenous person and serve as the Secretary-General of the Commission and hold the rank of the Secretary to the Government of Nepal
  - (b) such investigative staff and officers as may be necessary for the efficient performance of the functions of the Commission.
- (2) Subject to such rules as may be made by the Government of Nepal in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.
- (3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.
- (4) Subject to such rules as adopted by the Commission, it may hire consultants/ staff who are independent of the staff provided by the government of Nepal.

**14. Offices and departments of the Commission**

The Commission, among others, shall have the following offices which shall be headed by indigenous persons and be responsible for the implementation of the policies hereinafter provided:

- a) Policy, Planning and Research and Advocacy office will be responsible for formulation of appropriate policies and programs for indigenous peoples such as, but not limited to, the development of a Five-Year Master Plan for the indigenous peoples. The Commission shall endeavor to assess the plans and make necessary rectifications in accordance with the changing situations. The Office shall also undertake the documentation of customary law and shall establish and maintain a Research Center that would serve as a depository of ethnographic information for monitoring, evaluation and policy formulation. It shall assist the legislative branch of the government in the formulation of appropriate legislation on indigenous peoples;
  - b) Education and Culture Office will ensure effective implementation of the education, cultural and health rights of the indigenous peoples. It shall assist, promote and support community schools, both formal and non-formal, for the benefit of the indigenous communities, especially in areas where existing educational facilities are not accessible to members of the indigenous groups. It shall administer all scholarship programs and other educational rights intended for indigenous people's beneficiaries in coordination with the Ministry of Education, Culture and Sports and other related agencies. It shall also undertake special programs to preserve and promote the languages and traditional knowledge of the indigenous peoples.
  - c) Office on Socio-Economic Services and Special Concerns will coordinate with pertinent government agencies specially charged with the implementation of various basic socio-economic services, policies, plans and programs affecting the indigenous peoples to ensure that the same are properly and directly enjoyed by the indigenous peoples. It shall also be responsible for such other functions as the Commission may deem appropriate and necessary;
  - d) Women Rights Cell which, among others, shall design and implement the programmes of the Commission pertaining to indigenous women.
  - e) Youth and Child Rights Cell which, among others, shall design and implement the programmes of the Commission pertaining to indigenous youths and children.
  - f) Office of Empowerment and Human Rights will ensure the enjoyment of the human rights and fundamental freedoms by the indigenous peoples. It shall, among others, undertake capacity building programmes, participation of indigenous peoples at all levels of decision-making and intervene against violations of the rights of indigenous peoples.
  - g) Administrative Office, among others, shall provide the Commission with economic, efficient and effective services pertaining to personnel, finance, records, equipment, security, supplies and related services.
  - h) Legal Affairs Office shall, among others, advice the Commission on all legal matters concerning indigenous peoples and providing legal assistance to indigenous peoples in litigations.
  - i) Other Offices - The Commission shall have the power to create additional offices or regional offices in all development regions or wherever it may deem necessary.
- 15. Consultative Advisory Committee of the Commission**
- (1) It shall be the duty of the National Commission on the Adivasi Janjatis to inform and consult the Consultative Advisory Committee which shall have the mandate to:

- (i) advise the Commission on matters relating to the problems, aspirations and interests of the indigenous peoples; and
  - (ii) nominate indigenous representative to the "Recommendation Committee" for selection of the Commissioners.
- (2) The Consultative Advisory Committee shall consist of one representative of each indigenous community and the diversity of indigenous peoples including representation of women shall be ensured.
  - (3) The Consultative Advisory Committee shall meet twice a year or on an urgent basis as required;
  - (4) For the first term, the Governing Council of the National Foundation for Development of Indigenous Nationalities shall serve as the Consultative Advisory Committee for a period of two years;
  - (5) The Commission shall serve as the Secretariat for nomination of the Consultative Advisory Committee as per the procedure laid down for nomination of the members of the Governing Council of the National Foundation for Development of Indigenous Nationalities.

as the medium, through which such assistance may be extended;

- (b) To monitor, review, and assess the conditions of indigenous peoples including existing laws and policies pertinent thereto and to propose relevant laws and policies to ensure their proportionate participation in national development;
- (c) To coordinate, formulate and implement policies, plans, programs and projects of the government of Nepal for the economic, social and cultural development of the indigenous peoples and monitoring the implementation thereof;
- (d) To request and engage the services and support of experts from other agencies of government or employ private experts and consultants as may be required in the pursuit of its objectives;
- (e) To inquire into specific complaints, on receipt of complaints or suo motu, with respect to the violations of the rights and safeguards of the indigenous peoples;
- (f) To receive complaints and/or take suo motu action and inquire into non-implementation of the services provided by the government and compel action from appropriate agency.

**Chapter III:**

**FUNCTIONS AND POWERS OF THE COMMISSION**

**16. Functions and powers of the Commission**

- (1) It shall be the duty of the Government of Nepal to inform and consult the Commission on all major policy matters affecting indigenous peoples.
- (2) It shall be the duty of the Commission—
  - (a) To serve as the primary government agency through which indigenous peoples can seek government assistance and

- (g) To participate and advise on the planning process of socio-economic development of the indigenous peoples and to evaluate the progress of their development;
- (h) To study and make recommendations for sustainable development of indigenous peoples;
- (i) To discharge such other functions in relation to the protection, welfare and development and advancement of the indigenous peoples;

- (j) To discharge such other functions in relation to the protection, welfare and development and advancement of the indigenous peoples as the case may be, subject to the provisions of any law made by Parliament;
  - (k) To convene periodic conventions or assemblies of indigenous peoples to review, assess as well as propose policies or plans;
  - (l) To update the scheduled list of indigenous peoples through identification and recognition of the unidentified and unrecognized ones;
  - (m) To recognize, promote and protect traditional wisdom and knowledge of the indigenous peoples and prevent transfer of such knowledge and wisdom to non-indigenous peoples/areas without benefit sharing and ensuring full respect for the right to free, prior and informed consent;
  - (n) To act as the regulating agency for implementation of programmes or projects by non-governmental organizations and the private sector; and
  - (o) To promulgate the necessary rules and regulations for the implementation of this Act;
- (d) requisitioning any public record or copy thereof from any court or office;
  - (e) issuing commissions for the examination of witnesses and documents; and
  - (f) any other matter which may be prescribed by the parliament;

**17. Powers relating to inquiries**

- (1) The Commission shall, while inquiring into any complaint under Section 15 have all the powers of a civil or criminal court whichever applicable in respect of the following matters, namely:-
  - (a) summoning and enforcing the attendance of any person from any part of Nepal and examining him on oath;
  - (b) requiring the discovery and production of any documents;
  - (c) receiving evidence on affidavits;

- (2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information as legally provided.
- (3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies there from subject as provided under law.
- (5) Every proceeding before the Commission shall be deemed to be a judicial proceeding and the decisions of the Commission shall be appealable only before the Supreme Court of Nepal.

**Chapter IV:**

**PROCEDURES**

**18. Inquiry into complaints**

- (1) The Commission while investigating into non-implementation of safeguards available to the indigenous peoples under the Constitution of Nepal or any law for the being in force or inquiring into the complaints of violations of the rights of indigenous peoples may

- (i) call for information or report from the Government of Nepal or any other authority or agency or organisation of the Government within such time as may be specified by it;

Provided that-

- (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;
- (b) if, on receipt of information or report, the Commission is satisfied either that no further investigation or inquiry is required or that the required action has been initiated or taken by the concerned Government or concerned authority, it may not proceed with the complaint and inform the complainant accordingly;
- (ii) without prejudice to anything contained in sub-section (i), if it considers necessary, having regard to the nature the complaint, initiate an inquiry by its own investigation other agency of the government of Nepal as the Commission deems fit.
- (2) The officer or agency whose services are utilised under subsection (1)(ii) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.
- (5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

**19. Statement made by persons to the Commission**

No statement made by a person in the course of giving evidence before the Commission

shall subject him/her to, or be used against him/her in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement:-

- (a) is made in reply to the question which he is required by the Commission to answer; or
- (b) is relevant to the subject matter of the inquiry.

**20. Persons likely to be prejudicially affected to be heard**

If, at any stage of the inquiry, the Commission:-

- (a) considers it necessary to inquire into the conduct of any person or persons; or
- (b) is of the opinion that the reputation of any persons is likely to be prejudicially affected by the inquiry; it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his/her defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

**21. Steps after inquiry**

The Commission may take any of the following steps upon the completion of an inquiry held under this Act namely:

- (1) where the inquiry discloses the commission of violation of rights of the indigenous peoples or negligence in the prevention of violation of the rights by a public servant, it may recommend to the Government of Nepal or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

- (2) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (3) recommend to the Government of Nepal or authority for the grant of such immediate interim relief to the victim or the members of his/her family as the Commission may consider necessary;
- (4) subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his/her representative;
- (5) the Commission shall send a copy of its inquiry report together with its recommendations to the Government of Nepal or authority and the Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission; and
- (6) the Commission shall publish its inquiry report together with the comments of the Government or authority, if any, and the action taken or proposed to be taken by the Government or authority on the recommendations of the Commission.

**22. Annual and special reports of the Commission**

- (1) The Commission shall submit an annual report to the Parliament of Nepal and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.
- (2) The Government of Nepal shall submit a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

**Chapter V:**

**PROVINCIAL COMMISSIONS**

**23. Constitution of Provincial Commission on the Adivasi Janjatis**

- (1) The National Commission on the Adivasi Janjatis may constitute a Provincial Commission to be known as the ..... (name of the Province) Commission on Adivasi Janjatis to exercise the powers conferred upon, and to perform the functions assigned to by the National Commission.
- (2) The National Commission in consultation with the Provincial government and the Consultative Advisory Committee may by notification specify appoint
  - (a) a Chief Commissioner
  - (b) four other commissioners who shall represent diversity of indigenous peoples including equal representation of women;
- (3) There shall be a Secretary who shall be the Chief Executive Officer of the Provincial Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him.
- (4) The headquarters of the Provincial Commission shall be at such place as the National Commission may notify in consultation with the Provincial Government.

**Chapter VI:**

**FINANCE, ACCOUNTS AND AUDIT**

**24. Grants by the Government of Nepal**

- (1) The Government of Nepal shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Commission may present in a budget to the Government annually.
- (2) It shall be the duty of the Provincial government to provide financial resources for proper functioning of the Provincial

Commission as the Provincial Commission may present in a budget to the Government annually.

- (3) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).
- (4) The Commission can directly receive additional funds from foreign sources as donation, assistance, grants etc.

#### **25. Accounts and Audit**

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Government of Nepal in consultation with the Comptroller and Auditor-General of Nepal.

(2) The Accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General or any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon

shall be forwarded only to the Government of Nepal by the Commission and the Government of Nepal shall cause the audit report to be laid as soon as may be after it is received before each House of Parliament.

#### **Chapter VII:**

#### **MISCELLANEOUS**

##### **26. Matters not subject to jurisdiction of the Commission**

- (1) The Commission shall not inquire into any matter which is pending before a court or any other Commission duly constituted under any law for the time being in force.
- (2) The Commission shall not inquire into any matter after the expiry of five years from the date on which the act constituting violation of human rights is alleged to have been committed.

##### **27. Constitution of Expert Sub-Committees**

Notwithstanding anything contained in any other law for the time being in force, where the Commission considers it necessary so to do, it may constitute one or more Sub-Committees for purposes of research, investigation, review and monitoring of social, economic, cultural and civil and political rights of the indigenous peoples.

##### **28. Protection of action taken in good faith**

No suit or other legal proceeding shall lie against the Government of Nepal, the Commission or any Commissioner thereof or any person acting under the direction either of the Government of Nepal or Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made thereunder or in respect of the publication by or under the authority of the Government of Nepal or Commission of any report paper or proceedings.

**29. Commissioners and officers to be public servants**

Every Commissioner and every officer appointed or authorised by the Commission to exercise functions under this Act shall be deemed to be a public servant.

**30. Repeal and Savings**

(1) The National Foundation for

Development of Indigenous Nationalities hereby becomes a part of the Commission.

(2) Notwithstanding such repeal, anything done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provisions of this Act. ■

## राष्ट्रिय गोष्ठी

संक्रमणकालीन नेपाल र आदिवासि जनजाति सम्बन्धि राष्ट्रिय संघसस्थाहरुको भुमिका नामक राष्ट्रिय गोष्ठी, २-३ में २००७ होटेल याक एण्ड यती काठमान्डौ, नेपाल	कारवाहि अमान्य नहुने	७
आदिवासि / जनजाति राष्ट्रिय आयोगको मस्यौदा विधेयक	१२. आयोगद्वारा कार्यविधिको व्यवस्थापन	७
विषय सुची	१३. आयोगका अधिकृत तथा अन्य कर्मचारी	८
महिलो खण्डः	१४. आयोगको कार्यालयहरु तथा विभाग	८
प्रारम्भिक	१५. आयोगको परामर्श सल्लाहकार समिति	९
१. संक्षिप्त शिर्षक : विस्तार तथा प्रारम्भ	तेस्रो खण्डः	
२. परिभाषा	आयोगका काम कर्तव्य तथा अधिकार	१०
दोस्रो खण्डः आदिवासि / जनजाति राष्ट्रिय आयोग	१६. आयोगका काम कर्तव्य तथा अधिकार	१०
३. आदिवासि जनजाति राष्ट्रिय आयोगको विधेयक	१७. आयोगको जाँचबुझ सम्बन्धी अधिकार	११
४. मापदण्ड / योग्यता	चौथो खण्ड :	
५. मुख्य आयुक्त र अन्य आयुक्तहरुको नियुक्ति प्रकृया	कार्यविधि	१२
६. मुख्य आयुक्त तथा अन्य आयुक्तहरुको पदपुर्ति सम्बन्धि प्रकृया	१८. सोधपुछ तथा उजुरी	१२
७. मुख्य आयुक्त तथा अन्य आयुक्तहरुको राजिनामा तथा अवकास सम्बन्धि कार्य विधि	१९. आयोग समक्ष व्यक्तिको सुनुवाई	१३
८. आयुक्तहरुको पदावधी	२०. व्यक्ति विशेष विरुद्धको सुनुवाई	१३
९. आयुक्त, मुख्य आयुक्तको रुपमा कार्य सम्पादन गर्ने वा निश्चित परिस्थितिमा मुख्य आयुक्तको कार्य गर्ने	२१. सोधपुछ पछिको कारवाही	१३
१०. आयुक्तको सेवासर्त	२२. आयोगको बार्षिक तथा विशेष रिपोर्ट	१४
११. पदपुर्ति सम्बन्धि आयोगका कानुनी	पाचौ खण्ड :	
	आर्थिक परिक्षण तथा लेखापरिक्षण	१५
	२४. नेपाल सरकारद्वारा प्राप्त अनुदान	१५
	२५. आर्थिक अनुदान तथा लेखाजोखा	१५

छैथौ खण्ड:		(ङ) अधिकार भन्नाले आदिवासि / जनजातिहरूका अधिकार जस्ता राष्ट्रिय तथा अन्तराष्ट्रिय मानव अधिकारले व्यवस्था गरेका निहित अधिकारलाई सम्झनु पर्दछ।
विविध		
२६. आयोगको क्षेत्राधिकार भित्र नपर्ने (विचाराधिन विषयवस्तुहरू)	१६	(च) आयुक्त भन्नाले यस आयोगका आयुक्त सम्झनु पर्दछ। र
२७. विशेषज्ञहरू सम्बन्धि उपसमितिको नियम	१६	(छ) विज्ञप्ति भन्नाले कार्यालयको गजेट मा प्रकासित विज्ञप्ति सम्झनु पर्दछ।
२८. अशल भावनाले / गरिएका कार्यहरूको वचाउ	१६	
२९. अधिकृत तथा आयुक्तहरू राष्ट्रसेवक	१६	परिच्छेद - २
३०. खारेजि तथा बचाउ	१७	आदिवासि / जनजाति राष्ट्रिय आयोग
संभावित आदिवासि / जनजातिहरू राष्ट्रिय आयोगको मस्यौदा विधेयक		३. आदिवासि / जनजाति राष्ट्रिय आयोगको विधेयक:
(अन्तरिम संविधान २०६४ मा संशोधनका लागि प्रस्तावित मस्यौदा विधेयक)		(१) आदिवासी / जनजातिहरूका आस्था, प्रथा, परम्पराहरू तथा संघसंस्थाहरूलाई विशेष ध्यान दिई उनीहरूको मौलिक स्वतन्त्रता, मानव अधिकारको सम्बर्धन तथा प्रवर्धनको लागि नेपाल सरकारले एउटा स्वायत्त अंगको रूपमा आदिवासि जनजाति राष्ट्रिय आयोग गठन गर्नेछ। साथै यस ऐनको अधिनमा रहि अधिकार र काम कर्तव्यको पालना तथा कार्यन्वयन गर्नेछ।
संविधान तथा अन्य प्रचलित कानूनद्वारा प्रदत्त आदिवासि / जनजातिहरूको अधिकारको प्रभावकारी कार्यान्वयन एवं सुरक्षण र सम्बर्धन गर्ने सम्बन्धमा तथा यस संग सम्बन्धित अन्य विषयका संरक्षणको लागि एक स्वतंत्र र स्वायत्त राष्ट्रिय आदिवासि / जनजाति आयोग स्थापनाको लागि बनेो विधेयक।		(२) आयोगको स्थापना र गठन
परिच्छेद - १		(१) देहाय बमोजिमका मुख्य आयुक्त र अन्य आयुक्तहरू रहने गरी आदिवासि / जनजाति राष्ट्रिय आयोग गठन हुनेछ:
प्रारम्भिक		(क) एक प्रमुख आयुक्त र
१. संक्षिप्त शिर्षक, विस्तार तथा प्रारम्भ		(ख) आठ जना अन्य आयुक्तहरू रहनेछन्।
(१) यस ऐनको नाम आदिवासि / जनजाति राष्ट्रिय आयोग ऐन २०६४ रहेको छ।		(३) आदिवासि / जनजातिबाट एक जना यस आयोगको महासचिव हुनेछ।
(२) यो नेपाल अधिराज्यभर लागुहुनेछ।		महासचिव नै यस आयोगको कार्यकारी अधिकारी हुनेछ र आयोगले प्रत्यायोजन गरेका अधिकार र कार्यहरू गर्नेछ।
(३) यो ऐन मिति ..... २०६४ ... पछि लागु हुनेछ।		महासचिव नेपाल सरकारको कर्मचारी र राष्ट्रिय तथा अन्तराष्ट्रिय सरहको अनुभव भएको हुनुपर्छ भन्ने छैन?
२. परिभाषाहरू : विषय वा प्रसंगले अर्को अर्थ नलागेमा यस ऐनमा।		(४) यस आयोगको मुख्य कार्यलय काठमान्डौमा रहनेछ र यसका अन्य कार्यलयहरू र क्षेत्रिय कार्यलयहरू नेपालको अन्य स्थानहरूमा स्थापना गर्न सकिनेछ।
(क) सिफारिस समिति भन्नाले दफा ५ बमोजिम गठन भएको समितिलाई सम्झनु पर्छ।		४. मुख्य आयुक्त तथा अन्य आयुक्तको योग्यता :
(ख) आदिवासि / जनजाति भन्नाले राष्ट्रिय तथा अन्तराष्ट्रिय कानूनले व्याख्या गरेको तथा स्थापित मापदण्ड भित्र आउने आदिवासि / जनजातिलाई सम्झनु पर्छ।		(१) प्रमुख आयुक्त तथा अन्य आयुक्तको योग्यता देहाय वमोजिमको हुनेछ:
(ग) प्रमुख आयुक्त भन्नाले यस आयोगको प्रमुख आयुक्तलाई सम्झनु पर्दछ।		(क) नेपाली नागरिक
(घ) आयोग भन्नाले दफा ३ अर्न्तगतको आदिवासि / जनजाति आयोग सम्झनु पर्दछ।		

- (ख) राष्ट्रिय कानुनले मान्यता प्राप्त आदिवासि / जनजातिबाट योग्य सदस्य निकायमा रहि ७ वर्ष सेवा गरे. को र स्नातक उत्तिर्ण गरेको हुनुपर्नेछ।
- (घ) आदिवासि / जनजातिको न्यायका निम्ति निस्वार्थ भै काम गर्ने, इमानदार तथा क्षमतावान व्यक्ति हुनु पर्नेछ।
- (२) आयुक्तहरूको बनावट आदिवासि / जनजातिहरूको विविधतालाई प्रतिविम्बित गर्ने गरि हुनेछ जस्मा समान प्रति. निधित्वको लागि हिमाल, पहाड र तराई गरी तीन क्षेत्रबाट समान प्रतिनिधित्व हुनेछ।
- (३) भौगोलिक विविधताको आधारमा कम्तिमा ५० प्रतिशत महिला आयोगका सदस्य रहनेछन्।
- (४) कम्तिमा एक जना अवकास प्राप्त न्यचायधिस यस आयोगको आयुक्तको आयुक्तको रूपमा रहनेछन् र उक्त पदको लागि आदिवासि / जनजाति हुनुपर्दछ भन्ने बाध्यता हुनेछैन।
५. मुख्य आयुक्त र अन्य आयुक्तको नियुक्त गर्ने कार्यविधि:
- (१) यस आयोगको प्रमुख आयुक्त तथा अन्य आयुक्तहरूको नियुक्ति सिफारिस समितिको सिफारिसमा राज्य प्रमुखबाट हुनेछ। यस समितिमा देहायका सदस्यहरू रहनेछन :
- (१) प्रधान मन्त्री
- (२) सभामुख प्रतिनिधि सभा
- (३) प्रतिनिधि सभाको प्रतिपक्ष दलको नेता
- (४) सल्लाहकार समितिमा सिफारिस पहिलो अवधिको लागि ३ जना प्रतिनिधिहरू आदिवासि / जनजाति राष्ट्रिय विकास प्रतिष्ठानको व्यावस्थापन परिषदले नियुक्ति गर्नेछ।
- सिफारिस समितिका अध्यक्ष समितिका सदस्यहरू बाटै निर्वाचित हुनेछन्। गणपुरक संख्या दुई तिहाई सदस्यबाट पुर्ति हुनेछ।
- (२) सिफारिस समीतीको मनोनयन गर्ने कार्यविधि देहाय बमोजिम हुनेछ :
- (क) प्रमुख / आयुक्त तथा अन्य कायुक्तको रिक्त पद पुर्ति गर्नको लागि आदिवासि / जनजाति राष्ट्रिय आयोगका महासचिवले शुचना जारी गर्नेछ। प्रथम अवधिको लागि आदिवासि / जनजाति राष्ट्रिय विकास प्रतिष्ठानका प्रबन्धक यस सिफारिसका समितिको सचिवको रूपमा काम गर्नेछन्।
- (ख) मनोनयन सम्बन्धि जानकारी यस आयोगको सुचनापाटिमा प्रकासित हुनेछ साथै राष्ट्रिय पत्रिका तथा विद्युतिय उपकरण मार्फत जारी गरिनेछ।
- (ग) मनोनयन दइर्ता गर्ने काम सुचना जारी गरेको एक महिना भित्र पुरा गरिनेछ।
- (ङ) मनोनयन दर्ता गर्ने समय सकियपछि सिफारिस समि. तिको महासचिवले सबै उम्मेदवारहरूको पुर्ण विवरण जस्तै: नाम ठेगाना काम अनुभव सार्वजनिक गरेर सबै आदिवासि / जनजातिहरू वा संघ संस्थाहरूका तर्फबाट उम्मेदवारहरूको टिप्पणी लिनेछन्। यो कार्य सिफारिस समितिमा नाम पठाउनु भन्दा पहिला तथा उम्मेदवार सम्बन्धि पुर्ण विवरण सार्वजनिक गर्ने पुर्व गरिनेछ।
६. प्रमुख आयुक्त तथा अन्य आयुक्तहरूको रिक्त पदपुर्ति गर्ने कार्यविधि :
- (१) राजिनामा वा निश्कासन हुदाको अबस्थामा यस ऐनको दफा ७ अनुसार पदपुर्ति गरिनेछ।
- (२) प्रमुख आयुक्त तथा अन्य आयुक्तहरूको राजिनामा वा निश्कासन भएको ३ महिना भित्र पुरा गरिनेछन्।
- (३) प्रमुख आयुक्त था अन्य आयुक्तहरूको अवकास वा समय अवधि समाप्ति भएको अवस्थामा रिक्त पदपुर्ति गर्ने कार्य सो समय अवधि पुरा हुनु अगावै गर्नुपर्नेछ।
७. प्रमुख आयुक्त तथा अन्य आयुक्तहरूको राजिनामा तथा बर्खास्ति :
- (१) प्रमुख आयुक्त तथा अन्य आयुक्तहरूले आफ्नो पदबाट लिखित राजिनामा दिन राज्य प्रमुख समक्ष पेश गर्न सक्नेछन्।
- (२) उपदफा ३ बमोजिम प्रमुख आयुक्त तथा अन्य आयुक्तहरूलाई पदमुक्त गर्नको लागि सर्वोच्च अदालतले असक्षमता र अवाच्छनीय कार्य गरेको भनि प्रमाणित गरेको आधारमा सिफारिस समितिको स्वीकृती वा अन्य कुनै पनि जनजातिय समुदायहरू गरेको सिफारिसको आधारबाट पदमुक्त हुनेछन्।
- (३) उपदफा १ मा जेसुकै लेखिएको भएता पनि राज्य प्रमुखले सिफारिस समितिको सुझावका आधारमा प्रमुख आयुक्त तथा अन्य आयुक्तहरूलाई देहाय बमोजिमको आधारमा पद मुक्त गर्न सक्नेछन्।
- (१) आर्थिक दायित्व निर्वाह गर्न नसक्ने गरि टाट पल्टेको घोषणा गरेमा
- (२) अन्य जागिरमा संलग्न भएमा
- (३) मानसिक वा शारिरिक रूपमा अयोग्य ठहरिएमा वा
- (४) अदालतले मगज विग्रेको भनि प्रमाणित गरेमा
- (५) कुनै नैतिक पतन देखिने फौजदारीअभियोगमा अदालतबाट कसुरदार ठहरिएको

८. आयुक्तहरूको पदावधी
१. प्रमुख आयुक्तको पदावधी नियुक्त भएको मितिले ५ वर्षको हुनेछ।
२. अन्य आयुक्तहरूको पदावधी नियुक्त भएको मितिले ५ वर्षको हुनेछ साथै यस पदको लागि पुनः नियुक्ति हुन सक्नेछन्।
६. आयुक्त, प्रमुख आयुक्तको रूपमा काम गर्ने वा निश्चित परिस्थितीमा प्रमुख आयुक्तले आफ्नो अधिकार (प्रात्यायोजन) गर्न सक्ने अवस्था।
१. प्रमुख आयुक्तको मृत्यु भएमा वा राजीनामा दिई पद रिक्त हुन गएको अवस्थामा आयुक्तहरू मध्येबाट एक जनालाई प्रमुख आयुक्तको रूपमा अर्को नियुक्ती नहुन्जेल सम्मको लागि नियुक्त हुन सक्नेछ।
२. प्रमुख आयुक्त बिदामा बसेको बेला वा अन्य कारणले आफ्नो काम कर्तव्य पालन गर्न असमर्थ रहेको अवस्थामा आयुक्त मध्येबाट एक जनाले उक्त पदमा रही प्रमुख आयुक्त आफ्नो कार्यलयमा हाजीर नहुन्जेल सम्मको लागि प्रमुख आयुक्तको कामकार्य गर्न सक्नेछन्।
१०. आयुक्तहरूको सेवा सर्तहरू:
- आयुक्तहरूको पारिश्रमिक सुविधा नेपाल सरकारले तोके बमोजिम हुनेछ। आयुक्त पदमा नियुक्ति भएपछि पारिश्रमिक सुविधा सेवा सर्त वा तलब सुविधामा परिवर्तन गरिनेछैन।
११. रिक्तस्थान ईत्यादीमा आयोगको कामकारवाही अमान्य नहुने:
- कुनै आयुक्तको स्थान रिक्त रहेको कारणले मात्र आयोगको काम कारवाही अमान्य हुने छैन।
१२. आयोगको कार्यसंचालन विधि देहाय बमोजिम हुनेछ:
१. आयोगको बैठक मुख्य आयुक्तले तोकेको मिति र स्थानमा बस्नेछ।
२. आयोगका सम्बन्धी अन्य कार्यविधि आयोग आफैले व्यवस्था गर्न सक्नेछ।
३. आयोगका सबै आदेस तथा निर्णयहरूको लेखा परिक्षण यस आयोगका महासचीवले वा प्रमुख आयुक्तले नियुक्त गरिएका यस आयोगको कुनै पनि अधिकृत द्वारा गरिनेछ।
१३. आयोगका अधीकृत तथा अन्य कर्मचारीहरू:
१. कर्मचारी तथा अधिकृतहरूको व्यवस्था नेपाल सरकारले गर्नेछ।
- (क) अधीकृत पदको लागी आदिवासी / जनजाती बाटै नियुक्त हुनेछ उक्त व्यक्ति महासचीवको रूपमा कार्य गर्नेछ। उसको ओहोदा नेपाल सरकारको सचिव सरह हुनेछ।
- (ख) अनुसन्धान अधीकृत तथा कर्मचारीहरू आयोगको प्रभावकारी कार्य सम्पादनको लागी आवश्यक हुनेछन।
२. यस सम्बन्धमा नेपाल सरकारले नियमहरू बनाई आयोगको आवश्यकता बमोजिम प्रसासनिक, प्राविधिक तथा विज्ञान सम्बन्धी कर्मचारीहरू नियुक्त गर्न सक्नेछ।
३. उप दफा २ बमोजिम नियुक्त भएका अधीकृत तथा कर्मचारीहरूको सेवा सर्त, तलब तथा सुविधाहरू नेपाल सरकारले तोके बमोजिम हुनेछ।
४. आयोगलाई आवश्यक पर्ने कर्मचारी आयोगले नेपाल सरकारलाई माग गर्न सक्नेछन्, त्यसरी माग गरिएका कर्मचारी उपलब्ध गराउनु नेपाल सरकारको कर्तव्य हुनेछन्।
१४. आयोगका कार्यालय तथा विभागहरू:
- आयोग नीतिहरू लागु गराउन देहाय बमोजिम वा कार्यालयहरू हुनेछन। जसलाई कार्यान्वयन आदिवासी / जनजातीहरूले गर्नेछ।
- क. नीति, योजना, अनुसन्धान तथा वकालत सम्बन्धी कार्यालय :
- यो कार्यालय आदिवासी / जनजातीहरूको लागी उपयुक्त निति निर्माण कार्य तथा पच्चबर्षिय गुरुयोजना तर्जुमा गर्नका लागी उत्तरदायी हुनेछ।
- आयोगले बदलिदो परिस्थिती अनुरूप योजनाहरूको मूल्याङ्कन तथा सुधार गर्ने प्रयत्न गर्नेछ। चलन चल्तिका प्रचलित कानूनहरूको लिखित रूपदिने कार्य गर्नुका साथै अनुसन्धान केन्द्र स्थापना गर्नेछ।
- विभिन्न जातिहरूको मुल्याङ्कन, अवलोकन तथा निति निर्माण गर्नको लागी आवश्यकपर्ने शुभनाहरू संकलनको रूपमा कार्य गर्नेछ। आदिवासी / जनजातीहरूको हितको लागी बनाइने उपयुक्त कानूनको निर्माणमा सरकारलाई मद्दत गर्नेछ।
- ख. शिक्षा तथा साँस्कृति सम्बन्धि कार्यालय :
- यस कार्यालयले जनजातीहरूको शिक्षा साँस्कृति तथा स्वास्थ्य सम्बन्धी अधिकार प्रभावकारी ढंगले लागु गर्ने कार्य निश्चित गर्नेछ।
- आदिवासी / जनजातीहरूको फाईदाको लागी औपचारिक तथा अनौपचारिक दुवै खालको सामुदायीक स्कुलहरूलाई सहयोग तथा उत्थान गर्ने, दुर्गम ठाउँमा रहेका जनजातीय

समुदाय जहाँ विद्यमान शिक्षाको सुविधाबाट बञ्चित  
समुदायलाई विशेष ध्यान दिए कान गर्नैछ।

यस कार्यालयले खेलकुछ शिक्षा तथा संस्कृती मन्त्रालयसंग  
सम्बन्धित अन्य निकायहरु संग समन्वय गरी आदिवास /  
जनजातीहरुको हितमा छात्रवृती तथा अन्य शैक्षिक  
अधिकार सम्बन्धी कार्य गर्ने छ। आदिवास /  
जनजातीहरुको

परम्परागत ज्ञान भाषाहरु तथा संस्कृतिको संरक्षण तथा  
विकास गर्नको लागि विशेष कार्यक्रमहरु सञ्चाल गर्नेछ।

ग. सामाजिक आर्थिक सेवाहरु तथा विशेष सरोकार  
सम्बन्धी कार्यालय :

यस कार्यालयले आधारभूत सामाजिक आर्थिक सेवाहरु,  
निती, योजनाहरु कार्यक्रमहरु सञ्चालन तथा कार्यान्वयन  
गर्न स्थापित सरकारी निकायहरूसंग समन्वय गरी  
आदिवासी / जनजातीहरुले यी कार्यक्रमहरुबाट फाईदा  
लिन सकेका छन् छैन् भन्ने कुरा निश्चित गर्ने तथा  
आयोगले उचीत ठहराएमा वा आवश्यक ठानेमा यस प्रक.  
एका अन्य कार्यहरु गर्नेछ।

घ. महिला अधिकार सम्बन्धि शाखा : यस कार्यालयले  
आदिवासि / जनजाती महिलाहरु सम्बन्धी कार्यक्रमहरु  
तर्जुमा तथा कार्यान्वयन गर्नेछ।

ङ. युवा तथा बालबालिका शाखा : यस कार्यालयले  
जनजाति युवा तथा बालबालिकाहरु सम्बन्धि कार्यक्रम तथा  
तर्जुमाको कार्यान्वयन गर्नेछ।

च. युवा तथा बालबालिका शाखा : यस कार्यालयले  
आदिवासि / जनजाती युवा तथा बालबालिका सम्बन्धी  
कार्यक्रमहरुको तर्जुमा तथा कार्यान्वयन गर्नेछ।

छ. मानव अधिकार तथा शशक्तिकरण कार्यालय:

यस कार्यालय आदिवासि / जनजातीहरुले आधारभूत  
मानव अधिकार तथा स्वतन्त्रताको उपभोग गर्ने कुराको  
निश्चितता गर्नेछ। साथै अन्य क्षमता अभिवृद्धि कार्यक्रम,  
राज्यको नितिनिर्माणका अंगहरुमा आदिवासि /  
जनजातीको सहभागीता तथा जनजाती हरुको अधीकारका  
उलघन उनीहरु विरुद्ध हुने हिंसा को विरोध जस्ता  
कार्यप्रती सधै जिम्मेवार रही कार्य गर्नेछ।

ज. प्रशासन सम्बन्धी कार्यालय : यसकार्यालयले  
व्यक्तिगत आर्थिक उपकरण सुरक्षा, कागजातहरु, भण्डार  
तथा अन्य सम्बन्धी सेवाहरु सम्बन्धीत मितव्यापी तथा  
प्रभावकारी सेवाहरु आयोगलाई प्रदान गर्नेछ।

झ. कानूनी मामिला सम्बन्धी कार्यालय :

यस कार्यालयले आयोगलाई कानूनी सल्लाह दिनुका साथै  
जनजातीहरु को मुद्दामामिलामा कानूनी सहयोग प्रदान

गर्नेछ।

ण. अन्य कार्यालयहरु :

आयोगले उपयुक्त ठानेको स्थानमा विभिन्न विकास  
क्षेत्रहरुमा थम कार्यालयहरु तथा क्षेत्रीय कार्यालयहरु  
स्थापना गर्न सक्नेछ।

१५. आयोगको परामर्श तथा सुझाव समिति :

आदिवासि / जनजातीहरुको सम्बन्धमा, राष्ट्रिय आयोगले  
परामर्श, तथा सुझाव समितिलाई जानकारी दिनु तथा  
परामर्श लीनु उसको कर्तव्य हुनेछ। यसले देहायको  
विषयमा सल्लाह दिन सक्नेछ:

क. आदिवासी / जनजातीको सरोकार संग सम्बन्धीत  
समस्याहरु चाहनाहरु र रुचीका सम्बन्धमा आयोगलाई  
सुझाव दिने,

ख. आयुक्त पदको छनौटको लागि जनजाती  
प्रतिनिधिहरुको नाम चयन गरी सिफारिस समितिलाई  
पठाउने

ग. परामर्श तथा सुझाव समितिमा प्रत्ययक आदिवासी /  
जनजाती समुदायबाट एक जना प्रतिनिधि, साथै महिला  
प्रतिनिधिका निश्चितता गर्ने।

घ. परामर्श सुझाव समितिको बैठक वर्षको दुइ पटक वा  
आवश्यकता अनुसार बस्नेछ।

ङ. आदिवासी / जनजातीहरुको विकासको लागि राष्ट्रिय  
प्रतिस्थानको व्यावस्थापन परिषद परामर्श सुझाव समितिको  
रुपमा २ वर्ष सम्मको लागि कार्य गर्नेछ।

च. आदिवासी / जनजातीहरुको विकासको लागि राष्ट्रिय  
प्रतिष्ठानको व्यवस्थापन परिषदको नियमानुसार परामर्श  
सुझाव समितिको छनौटको लागि आयोगको सचीवालयको  
रुपमा कार्य गर्नेछ।

परिच्छेद - चार

आयोगका काम कर्तव्य तथा अधिकार

१६. आयोगका काम कर्तव्य र अधिकार :

नेपालका आदिवासी / जनजातीहरुलाई प्रभाव पार्ने  
खालका सबै प्रमुख नितिहरुमा नेपाल सरकारले  
आयोगलाई जानकारी गराउने तथा राय परामर्श लिने  
प्रमुख कर्तव्य हुनेछ।

क. आयोगका काम कर्तव्य र अधिकार देहाय बमोजीम  
हुनेछन्:

यस आयोगले सरकारको प्रारम्भिक नियोगको रुपमा एउटा

- माध्यामको कार्य गर्नेछ जसद्वारा आदिवासी / जनजा. तिहरूले सरकारबाट सहयोग लिने तथा खोली गर्ने, कार्य गर्ने छ।
- ख. आदिवासी / जनजातीहरूको अवस्थाको साथै विद्यमान कानून तथा नितिहरूको तथा पर्यवेक्षण गर्नेछ। साथै राष्ट्रिय विकासमा आदिवासी / जनजातिहरूको भूमिकालाई सुनिश्चित गर्नका लागि सान्दर्भिक कानून तथा नितिहरू प्रस्तावित गर्ने कार्य गर्ने।
- ग. आदिवासी / जनजातीहरूको आर्थिक सामाजिक तथा साँस्कृतिक विकासको लागि नेपाल सरकारको कार्यक्रम योजनाहरूको तर्जुमा समन्वय तथा कार्यान्वयन साथै यसको अवलोकन गर्ने कार्य गर्नेछ।
- घ. आफ्नो लक्ष प्राप्तीका लागि आयोगले सरकारको अन्य निकायहरूलाई अनुरोध गर्ने तथा उनीहरूको सेवा र सहयोग जुटाउनुका साथै आवश्यकता अनुसार निजी विशेषज्ञहरू / सल्लाहकारहरू नियुक्त गर्ने।
- ङ. आदिवासी / जनजातीका अधिकारहरूको सुरक्षा तथा हननका सम्बन्धमा प्राप्त उजुरीहरू वा विशेष उजुरीहरूको छानबिन गर्ने।
- च. उजुरीहरू प्राप्त गर्नु, कारवाही चलाउनु, राज्य तथा निकायहरूले गरेको व्यवस्थाको कार्यान्वयन नभएका कार्यक्रमहरूको छानबिन गर्नु,
- छ. आदिवासी / जनजातीहरूको सामाजिक तथा आर्थिक विकासका योजनाहरू तर्जुमा गर्नु तथा उक्त कार्यक्रमको विकास र प्रगतिको मुल्याङ्कन गर्नु।
- च. सांसदद्वारा पारित भएका आदिवासी / जनजातीहरूको दीगो विकासको लागि कानूनहरूको अध्ययन तथा सिफारीस गर्नु
- झ. आदिवासी / जनजातीहरूको आवधिक महाधिवेशन तथा सम्मेलनहरू आह्वान गरी निति तथा कार्ययोजनाहरूको पुनरावलोकन तथा मुल्याङ्कन गर्नु।
- ण. आदिवासी / जनजातीहरूको परम्परागत ज्ञान सिपको पहिचान गर्नु तिनको संरक्षण तथा विकास गर्नु साथै यस प्रकारका ज्ञान सिपहरू आदिवासी / जनजातीहरूको जित विपरित तथा सहमती बिना गैर जनजातीय क्षेत्र वा सामुदायमा हस्तान्तरण हुन नदिनु।
- ट. गैर सरकारी संगठनहरू तथा निजी क्षेत्रबाट सञ्चालित कार्यक्रमहरू वा योजनाहरू लागु गराउनको लागि व्यवस्थापना निकायको रूपका कार्य गर्नु।
- ड. यो कानून लागु गराउन आवश्यक नियम, विनियमहरू जारी गर्नु।
१७. आयोगको जाँचबुझ सम्बन्धी अधिकारहरू :
१. आयोगले जाँचबुझ सम्बन्धी धारा १५ अन्तर्गत देवानी तथा फौजदारी अदालतका सम्पूर्ण अधिकारहरू प्रयोग गर्नेछ। विशेषत देहायका विषयहरूमा आवश्यकता अनुसार आफ्नो अधिकार प्रयोग गर्नेछ।
१. कुनै पनि कागजातहरूको स्पष्टिकरण तथा दाखिलाको आवश्यकताको सम्बन्धमा
३. वयानको लागि प्रमाणहरू बुझ्ने।
४. कुनैपनी अदालत वा निकायहरूबाट सार्वजनिक अभिलेखहरूको माग गर्ने
५. साक्षीहरूका सावित तथा कागजातहरूको लागि प्रका. शित गर्नु
६. अन्य विषयहरूमा कानून बमोजिम गर्न सक्नेछन्।
३. आयोग वा अन्य अधिकृतहरू (अधिकृतभन्दा तल्ला तहमा नभएका विशेष गरी आयोगले अधिकार प्रत्यायोजन गरेका अधीकृतहरू) विषय संग सम्बन्धीत कुनै पनि काग. जातहरू पाईएमा वा भएको विश्वास गरेमा उसले कुनै पनि घर स्थानमा प्रवेश गर्न सक्ने तथा कुनै पनि कागजात बरामद गर्ने तथा कानूनले व्यवस्था गरे अनुरूप वा प्रतिलि. पी प्राप्त गर्न सक्नेछ।
४. प्रत्येक कार्यावाही आयोग समक्ष न्यायिक ठानीनेछ। साथै आयोगका निर्णयहरू नेपालका सर्वोच्च अदालत समक्ष मात्रै पुनरावेदन गर्नसक्नेछ।
- परिच्छेद ४ कार्यविधिहरू
१८. उजुरीहरू माथी छानबिन:
- नेपालका संविधान वा कुनै पनि कानूनले व्यवस्था गरे अनुरूप आदिवासी / जनजातिहरूको सुरक्षा तथा उनीहरूका अधिकारहरूको हननको सम्बन्धमा आयोगले देहाय बमोजिम जाँचबुझ गर्न सक्नेछ:
- क. नेपाल सरकारसंग जानकारी तथा रिपोर्ट माग्न सक्नेछ वा उक्त समयमा नेपाल सरकारमा अन्य आधीक. ारीक निकाय तथा संगठनहरू संग उक्त जानकारी तथा रिपोर्ट माग गर्न सक्नेछ।
- तापनि
- क. आयोगले माग गरेको समय अवधीमा जानकारीहरू तथा रिपोर्टहरू प्राप्त गर्न नसकेमा, यस प्रकारको उजुरीहरूको छानबिन आफैले गर्न सक्नेछन्।
- ख. प्राप्त जानकारी तथा रिपोर्टहरूका बारेमा यदि आयोगलाई संतोष लागी अन्य छानबिन तर्फ (सोधपुछ) को आवश्यक परेमा वा उक्त उजुरीहरू सरकारका सम्बन्धीत निकायले लिइ सुरु भईसकेकोमा आयोगले उजुरी अगाडी

बढाउने छैन वा तदअनुसार उजुरी कर्ता लाई जानकारी दिनेछैन।

ग. उपदफा (१) मा समावेश कुनै पनि चीज बिना पूर्वाग्रह कुनै पनि उजुरीहरूको प्रकृतिको बारेमा यदि आयोगले छानविनको आवश्यकता ठानेमा आयोग आफैले जाँचबुझ सोधपुछ गर्न सक्ने वा अन्य नेपाल सरकारका नियोगहरूले यस कार्यलाई अगाडी बढाउन सक्नेछ।

२. अधिकारी वा निकायहरू जसको सेवाहरू उपदफा १ को (२) बमोजिम उपयोग गरिएको छ, भने यसले छानविन सम्बन्धी कुनै पनि विषयमा अनुसन्धान गर्नेछन् र आयोगको तर्फबाट निश्चित गरिएको समय अवधि भित्र रिपोर्ट पेश गर्नेछन्।

५. व्याख्या गरिएका तथ्यहरू तथा निचोडहरूको यथार्थ तथा वा रुजुका सम्बन्धमा आयोग संतुष्ट हुनेछ वा आयोगले उचित ठानेमा यस उद्देश्यका निमित्त पेश गरि आयोग समक्ष बुझाइएका रिपोर्टको जाँचबुझ गर्न सक्नेछ। (व्यक्तिको सोधपुछ लगायत ती व्यक्तिहरू जसले यो छानविन सञ्चालन तथा सहायोग गरेका सम्बन्धमा)

१६. व्यक्ति विशेषको आयोग समक्ष दिइएको बयान:

कुनै पनि व्यक्तिले झुट्टा प्रमाण दिइएको वाहेक कुनै पनि व्यक्ति विशेषलाई आयोग समक्ष दिइएको कुनै पनि प्रमाणहरू विरुद्ध देवानी वा फौजदारी कुनै पनि प्रकारको कानूनी कारवाही हुनेछैन।

उपलब्ध गराईएको बयान:

क. सोधीएका प्रश्नहरूको जवाफहरू आयोगलाई आवश्यक रहेका वा छानविनको लागि सान्दर्भिक विषय वस्तुहरू हुनेछन्।

२०. व्यक्ति विशेष उपर हुने पूर्वाग्रही निर्णय उपर सुनुवाई :

यदि आयोगले कुनै पनि अवस्थामा छानविन गर्न सक्नेछ:

क. कुनै पनि व्यक्ति वा व्यक्ति विशेषहरूको आचरणको छानविन गर्नुपर्ने आवश्यकता ठानेमा

ख. कुनैपनि व्यक्ति विशेषको छानविनको क्रममा उसको इज्जत प्रतिष्ठा विरुद्ध पूर्वाग्रही ढङ्गबाट हुन सक्ने प्रभावका व्यवस्थामा आयोगले उक्त व्यक्तिलाई बचावटको लागि प्रमाणहरू पेश गर्न उपयुक्त अवसर दिनसक्नेछ।

२१. जाँचबुझ पछीका कारवाही :

यस ऐन अर्न्तगत आयोगले छानविनलाई पूर्णता दिनको लागि देहायका कुनै पनि कदमहरू लिन सक्ने छ जस्तै:

१. जाँच बुझ समितिले आयोग समक्ष आदिवासी / जनजातीहरूको हनन भएका वा अधिकार हनन हुने कराको

संरक्षण गर्ने कार्यमा सरकारी कर्मचारीहरूको हेलचक्राई भयो भन्ने कुरा खुलासा गरेमा आयोगले नेपाल सरकार समक्ष वा सजायको लागी कानूनी कारवाही अगाडी बढाउन आधीकारीक अंग वा कुनै पनि व्यक्ति वा व्यक्ति विशेष विरुद्ध कारवाही चलाउन आयोगले मनासिव ठानेमा।

२. आयोग यस प्रकारका आज्ञा आदेश वा निवेदन का लागि सर्वोच्च अदालत वा उच्च न्यायलय समक्ष पुग्नेछन्।

३. आयोगले आवश्यक ठानेमा पिडितको लागि तत्कालीन राहत सुनिश्चित गर्नका लागी नेपाल सरकार वा आधीक. ारीक निकाय समक्ष आफै वा परिवारका सदस्यलाई सिफारिस गर्नेछ।

४. दफा (५) मा व्यवस्था भएको विषयमा आयोगले जाँचबुझको रिपोर्टको प्रतिलिपि दरखास्तवाला वा उसको प्रतिनिधी लाई उपलब्ध गराउन सक्नेछ।

५. आयोगले नेपाल सरकार लाई आफ्नो सिफारिस सहितको जाँचबुझको रिपोर्ट पठाउने छ र सरकार वा आधीकारिले एक महिना भित्र वा आयोगले किटान गरेको समय अवधि भित्र रिपोर्ट माथी आफ्नो समिक्ष, साथमा लागु गरिएको कारवाही बा लागु गर्ने कारवाही सहीतको प्रतिलिपि आयोगलाई पठाउनेछ।

६. आयोगले नेपाल सरकार वा आधीकारीबाट प्राप्त जाँचबुझको रिपोर्ट तथा समिक्षाका साथै आयोगले सिफारिस वा आधारमा नेपाल सरकार वा अधिकारिले गरेका कारवाही वा प्रस्तावित कारवाहीहरू प्रकासित गर्न सक्नेछ।

२२. आयोगको बाबिक तथा विशेष रिपोर्ट :

क. नेपालको सांसद समक्ष आयोगले वार्षिक रिपोर्ट पेश गर्नेछ। अत्यावयकता वा महत्वका विषयमा विशेष रिपोर्टहरू कुनै पनि समय प्रस्तुत गर्न सक्नेछ। यसको लागी वार्षिक रिपोर्ट (प्रतिवेदन) प्रस्तुतीलाई पर्खने छैन।

ख. आयोगले सिफारिस गरेका विषहरूमा नेपाल सरकार द्वारा गरिएको कारवाही तथा प्रस्तावित कारवाही सम्बन्धी ज्ञापन पत्र आयोगलाई प्रस्तुत गर्नेछ र यदि कुनै अस्वीकृत गरिएका सिफारिस भएमा यसको कारण पनि आयोगलाई पेश गर्नेछ।

खण्ड ५

क्षेत्रिय आयोगहरू :

२३. आदिवासी / जनजातीका क्षेत्रीय आयोगहरू :

१. राष्ट्रिय आयोगले आदिवासी / जनजातीको क्षेत्रिय आयोग बनाउन सक्नेछ। जसको नाम (क्षेत्रको नाम) क्षेत्रिय आयोगहरूले राष्ट्रिय आयोग द्वारा निर्दिस्त गरेका कार्यहरू गर्नुका साथै दिएका अधिकार प्रयोग गर्नेछ। राष्ट्रिय

आयोगले क्षेत्रीय सरकार र परामर्श सुझाव समितिसंग परामर्श लीई निश्चित सूचना जारी गरी देहाय बमोजिमका पदहरूमा नियुक्त गर्न सक्नेछ।

क. एक जना प्रमुख आयुक्त

ख. आदिवासी / जनजाती हरूको विविधता प्रतिनिधित्व गर्ने गरी महिलाहरू सहितको अन्य चार जना आयुक्तहरू नियुक्त गर्न सक्नेछ।

३. क्षेत्रीय आयोगमा एकजना सचिव रहनेछ। उनै प्रमुख कार्यकारी भई राज्यस्तरको आयोगले प्रत्यायोजन गरेमा अधिकारको प्रयोग तथा काम कारवाहीको सम्पादन गर्नेछ।

४. क्षेत्रीय आयोगका मुख्यालयहरूको सम्बन्धमा राष्ट्रिय आयोगले क्षेत्रीय सरकार संग परामर्श लिई सूचना जारी गर्न सक्नेछ।

खण्ड - ६

आर्थिक विवरण तथा लेखा परीक्षण

२४. नेपाल सरकार द्वारा प्राप्त अनुदान :

१. सांसदले नियममा व्यवस्था गरेअनुरूप रकम विनियोजन गरेपछि नेपाल सरकारको अनुदानको रूपमा आयोगले वार्षिक रूपमा प्रस्तुत गरेको बजेट अनुरूपको भुक्तानी आयोगलाई विनियोजन गर्नेछ। जुन बजेट आयोगले प्रस्तुत गर्ने वार्षिक बजेटमा आधारित हुनेछ।

२. क्षेत्रीय आयोग सुचारु सञ्चालन गर्नको लागि क्षेत्रीय सरकारले आर्थिक स्रोत जुटाउने उसको कर्तव्य हुनेछ। हाल उपलब्ध गराइने आर्थिक स्रोत क्षत्रिय आयोगले आफ्नो वार्षिक बजेट सरकारलाई प्रस्तुत गरे अनुरूप हुन सक्नेछ।

३. आयोगले यस ऐन अन्तर्गत कार्यकारी सञ्चालन गर्न, आफुलाई मनासिव लागे मुताबिक खर्च गर्न सक्नेछ र उक्त रकम उप दफा (१) बमोजिम सरकारको अनुदानबाट तिर्ने गरी खर्चको रूपमा प्रयोग गर्न सक्नेछ।

४. आयोगले वैदेशिक सहायता सिधै अनुदान, सहयोग, चन्दा आदिको रूपमा लिन सक्नेछ।

२५. आर्थिक विवरण तथा लेखा परीक्षण :

१. आयोग ठीक आर्थिक विवरण र अन्य सम्बन्धीत (कागज.

जातहरू) अभिलेख कायम राख्न र आर्थिक विवरणको फाँटवारी लेखा नियन्त्रक र महालेखा परिक्षकसंग परामर्श लिई नेपाल सरकारले तोके बमोजिम तैयार गर्नेछ।

२. आयोगको लेखा परीक्षण लेखा नियन्त्रक तथा महालेखा परिक्षक बाट हुनेछ। लेखा परिक्षणको समय अवधी उनीहरूले तोकेबमोजिम हुन सक्नेछ। लेखा परिक्षण सम्बन्धी लाग्ने खर्च आयोगले लेखा नियन्त्रक तथा महालेखा परिक्षकलाई भुक्तानी गर्नेछ।

३. यस ऐन अन्तर्गत लेखा नियन्त्रक लेखा महापरिक्षक वा उनीहरूले आयोग लेखा परिक्षण गर्नका लागि नियुक्त व्यक्तिहरू सवैको अधिकार वा हैसियत सामान रहनेछ र लेखा परिक्षणसंग सम्बन्धी अधिकार साधारणतया सरकारी लेखा नियन्त्रक र लेखा महापरिक्षकको रूपमा हुनेछ। विशेषत उनीहरूलाई अभिलेख सम्बन्धी भौचर र अन्य काग. जातहरू माग गर्ने साथै आयोगको कार्यालय निरीक्षण गर्ने अधिकार हुनेछ।

४. आयोगको आर्थिक विवरण महालेखा परीक्षक, लेखा नियन्त्रक वा उनीहरूले नियुक्त गरेका व्यक्तिहरूले प्रमाणित गरे पछि आयोगले नेपाल सरकार समक्ष उक्त प्रमाणित कागजात प्रस्तुत गर्नुका साथै लेखा परिक्षण गर्नेछ र नेपाल सरकारले उक्त रिपोर्ट प्राप्त भएपछि उक्त लेखा विवरण कार्यान्वयनको लागि प्रतिनिधि सभामा पठाउनेछ।

अध्याय - ७

विविध

२६. आयोगको क्षेत्राधिकारभित्र नपरेका छलफलको विषयहरू:

१. आयोगले अदालतमा वा कुनै पनी ऐन अन्तर्गत सिमित व्ययको लागि विधीवत गठीत अन्य आयोगहरूमा विचाराधिन रहेको विषयहरूमा जाँच बुझ्न गर्न छैन।

२७. विज्ञहरू सम्बन्धी उपसमितिको विधान:

अन्य कुनै ऐन हरूमा समावेश भई तत्काल लागु भएको जेसुकै भएतापनी जतीबेला आयोगले आवश्यकता सङ्ग्रेमा, आयोगले आदिवासी जनजातीहरूको सामाजिक आर्थिक साँस्कृतिक नागरिक तथा राजनैतिक अधिकार सम्बन्धी अनुसन्धान जाँचबुझ, अनुमान तथा समिक्षा जस्ता उद्देश्यहरूको लागि उप समितिहरू बनाउन सक्नेछ।

२८. राम्रो मनसायबाट गरिएका काम कारवाहीको वचाउ: ■

## 6. Interim Constitution and Indigenous Peoples

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On 15 January 2007, the Interim Constitution of Nepal was endorsed by the Interim Parliament. The Interim Constitution appears to be more like a “political agreement” between the Seven Party Alliance and the CPN-Maoists than a Constitution. It failed to address the demands of the indigenous peoples.

Despite the Maoists’ promises on the oppressed, the Interim Constitution miserably failed to provide any bold guarantee for the protection and promotion of the rights of indigenous peoples who constitute over 37% of the total population of Nepal

### I. Exclusion of non-recognised indigenous peoples

The criteria being used so far by the Government of Nepal to recognise the indigenous peoples, known officially as Indigenous Nationalities, under the National Foundation for Development of Indigenous Nationalities Act, 2002 have been widely accepted as “not complete and exhaustive”. Many indigenous communities have either not been included in the official list of indigenous nationalities or been subsumed by other indigenous communities.

The Interim Constitution provided a historic opportunity to address such issues. It failed to address these anomalies and used different terms like “indigenous tribes”, “indigenous ethnic tribes”, “indigenous ethnic groups” and even as “oppressed tribes” to refer to the indigenous peoples of Nepal. The Interim Constitution of Nepal (First Amendment), 2007 also uses the term “aborigines” with regard to indigenous peoples.

### II. Lack of defined affirmative actions

The Interim Constitution authorises the State to take steps for positive discrimination for the welfare and development of the weaker sections of the society including women, Dalits, indigenous peoples and Madhesis. Article 13(3) states that “(3) The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these. Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of the interests of women, Dalit, indigenous ethnic tribes, Madhesi, or peasants, labourers or those who belong to a class which is economically, socially or culturally backward and children, the aged, disabled and those who are physically or mentally incapacitated.”

However, the Interim Constitution does not specify the concrete affirmative actions like reservation for jobs or admission to educational institutions for the indigenous peoples.

Reservation for the weaker sections as provided under Article 13 is only a State Policy, which is not enforceable by any court under Article 36. Article 35 (10) under Responsibilities, Directive Principles and Policies of the State states, “*The State shall pursue a policy which will help to promote the interest of the marginalized communities and the peasants and labourers living below poverty line, including economically and socially backward indigenous tribes, Madhesis, Dalits, by making reservation for a certain period of time with regard to education, health, housing, food sovereignty and employment.*” (emphasis ours)

Article 117 (2) provides for mandatory representation for women in the National Human Rights Commission. But the Interim Constitution is silent on the representation of women members from Dalit, Janjatis, Madhesi or other marginalized communities in various National Institutions.

Moreover, Article 63(4) provides that at least one third of the total representation in the Constituent Assembly should be reserved for women. However, there is no guarantee that women from indigenous communities will get representation.

### III. Non-equality of citizens

Article 13 recognizes all citizens of Nepal as equal before the law. Article 14 prohibits untouchability and racial discrimination against any person on the basis of caste, lineage, community or occupation and provides for punitive actions against such discriminatory act. Clause (2) of Article 14 specifically states, “No person shall, on the ground of caste or tribe, be deprived of the use of public services, conveniences or utilities, or be denied access to any public place, or public religious places, or be denied to perform any religious act.”

However, Article 142(4) gives the power to the Election Commission to deny registration to any political party if it discriminates any Nepali citizen against becoming a member of the political party on the basis of religion, caste, tribe, language or sex, among others.

One wonders how ethnic-based political parties will be dealt with. Earlier, the Election Commission of Nepal refused to register Mongol National Organisation.

### IV. Right to language and education

Indigenous peoples have been discriminated on the basis of their languages. The Nepali language has been recognized as the “official language” of Nepal under Article 5 (2) while other languages spoken as mother tongues have been recognized as “national lan-

guages”. Typical in Nepal, national languages are not recognised as official languages. The Supreme Court of Nepal earlier banned the use of national languages in official communications.

A large majority of indigenous peoples do not speak or understand Nepali. But Nepali has also been the only language used in courts across the country. Therefore, the lack of knowledge of Nepali has remained a major obstacle for equal access to justice by the indigenous peoples.

Article 17 makes it a fundamental right for every community to “get basic education in their mother tongue as provided for in the law” and “the right to preserve and promote its language, script, culture, cultural civility and heritage”. But the Interim Constitution does not guarantee the indigenous peoples’ right to get higher education in their own mother tongues. It also does not give the minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice, which shall also receive State grants without any discrimination. The Interim Constitution does not envisage as Directive Principles of State Policies to promote educational and economic interests of the indigenous peoples.

### V. No enforceable right against land alienation and forcible displacement

Article 19 of the Interim Constitution recognizes the right to property as a fundamental right. However, the State can forcibly take away lands in the name of “scientific land reform programme”, “public interest” etc in accordance with law. Under the Land Acquisition Act, 1977 of Nepal, the State can “acquire any land at any place for any public purpose, subject to compensation under this law”.

There is no specific safeguard to protect the rights of indigenous peoples over their land and natural resources. This is despite the fact that indigenous peoples have been the dispro-

portionate victims of land alienation, displacement and denial of access to natural resources.<sup>3</sup>

## VI. Decentralisation is not autonomy

Following a series of violent protests by the Madheshi people in the Terai region for autonomy, Nepal was declared as a federal State with the promulgation of the Interim Constitution of Nepal (First Amendment), 2007 by the Legislature-Parliament on 9 March 2007<sup>4</sup>. However, the form and degree of federalism has not been made clear. The word “federal” or “federalism” does not even exist in the Interim Constitution.

Initially, the Interim Constitution expressed vague ideas that the State shall have the responsibility “to carry out an inclusive, democratic and progressive restructuring of the State by eliminating its existing form of centralized and unitary structure in order to address the problems related to women, Dalits, indigenous tribes, Madhesis, oppressed and minority community and other disadvantaged groups, by eliminating class, caste, language, sex, culture, religion and regional discriminations” [Article 33 clause (d)]. There was no further elaboration of the process of decentralization of power.

The Interim Constitution of Nepal (First Amendment), 2007 added clause (d) to Article 33, which states, “To make participation on the basis of proportional inclusion of Madhesi, dalit, aborigines, women, laborers, farmers, disabled, underprivileged class and groups in all the organs of state mechanism of the nation.”

The First Amendment of Interim Constitution of Nepal provided the following under Article 63 (3):

“On the basis of equality of population, geographical convenience and speciality and in Madhesh on the basis of percentage of population as specified by law according to mixed electoral system, the number of Constituent

Assembly members with elected and nominated members shall be as follows:

Member elected as per the first part the post electoral system at the vote of one from each election constituency as determined by election constituency delimitation commission formed under article 154A; and for the purpose of election of members to the Constituent Assembly, administrative district shall be treated as election district, and the number of seats allocated to any district shall be, so far as possible, equal to the ratio of population, on the basis of last census done before the Constituent Assembly election.

Members to be elected equal in a number as per clause (a) by the proportional election system voting political parties treating the whole country as a single election constituency.

Seventeen members to be nominated by cabinet on the basis of consensus amongst persons of high reputation and who have rendered prominent service in various fields of national life”

The First Amendment of the Interim Constitution of Nepal 2007 also provided the following under Article 3(a) of the Article 63:

“3(a) Notwithstanding anything contained in clause (a) of Sub-Article (3) while determining election constituency according to the said clause, the election constituencies shall increased in hilly and mountain regions on the basis of population growth of those administrative districts keeping the election constituencies in the same number as was during the election of House of Representatives done as per the prevailing law in 2056 BS and while determining the election constituencies in this manner if the number of election constituencies become less in comparison to proportion of population of Madhesh, the election constituencies of administrative districts of Madhesh shall be increased.”

Under Article 138, the Interim Constitution envisages the idea of “Progressive Restructuring of the State”, which shall be done by a High Level Committee to be constituted by the Government of Nepal and the Constitution Assembly will have the final say in the restructuring of the State .

The Interim Constitution, however, falls short of granting “autonomy” to the indigenous peoples. Article 139 only provides for decentralization of power. Clause (1) of Article 139 states, “Arrangements will be made to set up offices for Regional Autonomous Governments to ensure the people’s exercise of their sovereignty by creating congenial atmosphere and thereby ensuring maximum peoples’ participation in the country’s governance, and also by providing services to the people at the local level and for the institutional development of democracy, based on the principle of decentralization and by guaranteeing the rights.” But there are no further clarifications on the issue of autonomy.

Article 34(2) states, “It shall be the objective of the State to maintain conditions suitable to the enjoyment of the benefits of democracy through maximum participation of the people in the governance of the country by the means of self-governance - tribal, linguistic cultural or regional, and to promote general welfare by making provisions for the protection and promotion of human rights, by maintaining tranquility and order in the society.” Article 139(2) provides for formation of interim local self governments at the District, City and Village level.

It is clear that the Constituent Assembly will be the final authority to decide on the future of Nepal, including its federal structure and form of government. Yet, the First Amendment to the Interim Constitution failed to mention the total number of members to be elected to the Constituent Assembly. Article 154(6) provides that “the Election Constituency Delimitation

Commission keeping in view of Article (3) and (3a) of Article 63 shall determine the number of the members to be elected making proportion equal to that of population of such district and the number of Constituent Assembly members as far as possible and shall determine the election constituencies for the constituent assembly member’s election, on the basis of the said number”. Article 154(a) Sub-Article (8) states that “...no election constituencies shall be determined in a way making in less number than the existing number of election constituencies in the district at the time of commencement of this Constitution”.

The decisions of the Election Constituency Delimitation Commission are final as regards to election constituencies and “No question shall be raised in any court regarding the determination of election constituencies made by the Election Constituency Delimitation Commission”. But the indigenous peoples cannot draw solace from the composition of the Delimitation Commission as there is no provision for compulsory inclusion of an indigenous person in it. Under Article 154(a), the Delimitation Commission is composed of Retired Judge of the Supreme Court as Chairperson; Geographer, Sociologist or demographer and Administration expert or management expert as Members; and Gazetted special class officer of the government of Nepal as Member Secretary. Unless indigenous peoples get represented in the Delimitation Commission, they can’t have faith on the federal structure of the state.

The Constituent Assembly must be inclusive of all groups of ethnicity, languages, religions and regions. While at least one member from each indigenous community must get representation, indigenous women must also be given proportionate representation in the 33% seats reserved for women.

The number of nominated members has been increased from 16 to 17. But there is no pro-

vision for mandatory nomination of indigenous members and indigenous women in the Constituent Assembly.

#### **VI. Farce “inclusive democracy”**

Under the Interim Constitution, “Nation” has been defined as “Having common aspiration of multiethnic, multilingual, multi religious, multi cultural characteristics and having committed and united by a bond of allegiance to national independence, integrity, national interest and prosperity of Nepal, the Nepalese people collectively constitute the nation.”

Article 21(1) of the Interim Constitution provides that “Women, Dalit, indigenous tribes, Madheshi community, oppressed group, the poor peasant and labourers, who are economically, socially or educationally backward, shall have the right to participate in the state mechanism on the basis of proportional inclusive principles.”

But the interim constitution does not clearly set a minimum limit of “proportionality” to be provided to them. There is also no reservation for the women within the Dalits and indigenous peoples. Merely stating “proportional inclusive principles” does not ensure effective proportional representation of women.

#### **VII. Inadequate representation in Legislature-Parliament**

Article 45(1)(c) states that out of total 330 members of the Legislature-Parliament, 48 members shall be “from among the Samyukta Bam Morcha, people based and professional organizations, class organizations and professional bodies, oppressed tribe, backward region, indigenous tribe, women and various political personalities nominated through understanding.”

This provision was deeply flawed. First, it is not known how many members will be from indigenous communities. Second, there was no provision for reservation of seats for the

indigenous peoples in the Legislature-Parliament.

#### **VIII. Inadequate representation in Council of Ministers**

Article 38 provides that there shall be a Council of Ministers headed by the Prime Minister. The Prime Minister shall appoint the Ministers on the recommendations of the concerned political party from amongst the members of the Legislature-Parliament. The Prime Minister is also empowered to appoint any person who is not a member of Legislature-Parliament as Deputy Prime Minister, Minister, State Minister or Assistant-Minister under Article 40. But there is no mention about the size of the Council of Ministers. Neither is there any guarantee for mandatory induction of any indigenous person into the Council of Ministers.

#### **IX. Judiciary**

Article 113 provides for establishment of a Judicial Council to make recommendations and give advice in accordance with the Constitution concerning the appointment of, transfer of, disciplinary action against, and dismissal of Judges, and other matters relating to judicial administration. It shall consist of the Chief Justice as Chairperson, the Minister of Justice as member, a senior advocate, or an advocate who has at least twenty years of experience, to be appointed by the Chief Justice on the recommendation of the Nepal Bar Association as member, a person to be nominated by the Prime Minister from amongst the jurists as member, and the senior-most Judge of the Supreme Court as member.

Article 114 further provides for setting up of a Judicial Service Commission, which shall consist of the Chief Justice as Chairperson, and four members - the Minister of Justice, the Senior-most Judge of the Supreme Court, the Chairperson of the Public Service Commission and the Attorney-General. Under such a provision, it is highly unlikely

that there will be any member from the indigenous communities in the Judicial Service Commission.

Indigenous peoples are seriously under-represented in the judiciary and no affirmative measures have been recommended to ensure representation of indigenous peoples in the judiciary. Most importantly, language of the court is Nepali, which is not understood or spoken by majority of indigenous peoples. Therefore, administration of justice suffers.

#### **X. Need for National Institution for Indigenous Peoples**

Article 154 of the interim constitution merely states, “The Government of Nepal

may form necessary commissions to safeguard and promote the rights and interests of different sectors of the country including women, Dalits, indigenous ethnic groups, Madhesi, disabled, labourers or farmers. The provisions for the formation, functions, duties and powers of such commissions shall be as determined by the law.”

The use of phrase like “The Government of Nepal may form necessary commissions” is a weak safeguard. The Interim Constitution does not provide for mandatory formation of National Commission for Indigenous Peoples for the protection and promotion of their rights. ■

## 7. Perception of the indigenous nationalities towards the Interim Constitution of Nepal-2063

**Presentation made by Dr. Om Gurung on behalf of NEFIN at the “National Seminar on Transition in Nepal and Role of National Institutions on Indigenous Nationalities”**

The Interim Constitution-2063 of Nepal has not included a number of issues as given below:

1. Since there is no provision for terminating the positions of Prime Minister, Chairperson and Vice-Chairperson of the House of Representative in the interim constitution, there should be a provision for terminating them by two third majority votes of the members of legislative parliament.
2. Since there also is no provision for calling a meeting of the members of legislative parliament in the interim constitution there should be a provision for calling the meeting on demand with a one third written request of the members.
3. The proportionate representation of indigenous nationalities, women, Dalit,



Terai and other deprived class and communities in the legislative parliament and in the interim government.

4. There is no provision to form a commission or task force to design a national flag.
5. There is no provision to appoint a representative of indigenous nationalities in the constitutional commission, committee and diplomatic agencies. The Nepal Federation of Indigenous Nationalities (NEFIN) a common organization of representative communities must be consulted and government must act as per the recommendations made by NEFIN.
6. No provision has been made to eradicate untouchability in practice.
7. There is no provision for recognizing the customary laws of the indigenous peoples.
8. There is a need to make a provision of a referendum for finalizing any issues that relates with nationality.
9. The provision of clarification for division of 48 seats mentioned under Article 38 should be removed.
10. The law should recognize the ethnic religion, custom and culture and norms and values that are based on tradition and practices.

Major issues like – the right to self-determination, restructuring the state based on ethnic, territorial self-rule and proportionate representation based on ethnic population in the constituent assembly are not included in the interim constitution. The state structure of Nepal is based on Hindu domination and Hindu religion which discriminated against indigenous nationalities, women, Madhesi, Dalit and different oppressed classes and communities on the ground of ethnicity, language, religion, gender, class and regions. Being a unitary and centralized system, the state does not provide any opportunity and place to different class and communities including indigenous nationalities and regions to participate in the state affairs. For example the indigenous nationalities representing 37.2% of the total population has got only 23.9 % member of the house of representative in the election of 2056 BS whereas only 30% of population belonging to Bahun/Chhetri represented 71.1% in the House of Representatives. Now the representatives of indigenous nationalities have reached to 30% after including the Maoist members.

However the members of indigenous peoples in the parliament prefer to speak about the opinion of the respective political parties and their own interest rather than the opinion of indigenous nationalities. It does not have any substantive meaning for indigenous nationalities. Representatives of indigenous nationalities are also somewhere very low and somewhere about to none in services such as executive, judiciary, education, health, armed forces etc. Due to such discriminatory policies the indigenous nationalities of Nepal are isolated from a national political life and mainstream of development. Consequently, the indigenous nationalities of Nepal are being highly marginalized and becoming poorer day by day.

Therefore, restructuring of the state is inevitable for making the state inclusive. Proportionate representation and more par-

ticipation of indigenous peoples by increasing the representative of indigenous nationalities in policy, decision making and implementation level are crucial. The indigenous nationalities have raised the issues of right to self-determination, restructuring the state based on ethnicity, region and self-governance strongly. The right to self-determination as the pillar of democracy and “ethnic self-rule” is the best remedy for conflict resolution and protecting “cultural diversity” of Nepal.

But the Brahmin rulers of Nepal have been manipulating public opinion that right to self-determination and ethnic self-rule will threaten nationality and sovereignty. Ethnic self-rule does not seek to divide different class and communities. But it helps to bring stability in the society by empowering all caste and ethnic groups. These examples can be found in India, Canada, Spain, Switzerland, Australia, etc. In these countries ethnic self-rule has not distorted the communal respect and national unity. Ethnic self-rule is the best ruling system in a multi-ethnic and multi-cultural country like Nepal.

Federalism is the alternative of ethnic self-rule. Such federalism exists in Switzerland and Canada. Now a national dispute has begun about federalism in Nepalese political circle. The ongoing movement emerged based on the demands of the indigenous peoples and Madhesi for a federal state and proportional representation. The government was forced to declare Nepal as a federal country. But a consensus has not been found on the federal structure. Different opinions have emerged within the supporters of federalism particularly in its process of formation, its fundamental principles and structure. On one side some are advocating a federal state based on geographical areas and on the other hand, the indigenous nationalities have been advocating a federal state based on ethnicity, language and geographical area. The federal state structured on the basis of ethnicity, language and geographical area will empower

political, social, cultural and economic structure of all castes, ethnic groups and classes through distribution of power and resources. This ensures an inclusive, participatory and representative democracy. In addition, it strengthens national integrity and ensures communal harmony. Since a federal state structured on the basis of caste, ethnic, language and geographical area brings a balance between different regions and caste/ethnic groups, the political and administrative power holders, the so-called higher caste Hindu rulers do not favor to federalism.

But in view of the distinctiveness of culture and geography, a federal state with ethnic

and territorial self-rule is the best system. Since the outline of federal state and ethnic self-rule is going to be finalized by the constituent assembly, the proportionate representation for the constituent assembly is crucial. But, nothing is mentioned in the interim constitution of Nepal-2063 and therefore, it should be amended. To fulfill our demands, the Nepalese Indigenous Nationalities have been leading a movement under the organization and call of the Nepal Federation of Indigenous Nationalities, its associate students, youth, journalists, labour and women organizations and "A Joint Struggle Committee of Indigenous Nationalities" has been formed. ■

## 8. The status of the indigenous peoples in Nepal

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### I. Who are indigenous peoples of Nepal?

The indigenous peoples of Nepal are officially known as “Indigenous Nationalities”. The National Foundation for Development of Indigenous Nationalities Act, 2002 defines Indigenous Nationalities as “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>5</sup> The “Schedule” to NFDIN Act gives a list of 59 Indigenous Nationalities.

The National Committee for Development of Nationalities (1996) has defined a Janajati or nationality as follows:<sup>6</sup>

“Nationality (Janajati) is that community which has its own mother tongue and traditional culture and yet do not fall under the conventional four fold Varna of Hindu or Hindu hierarchical caste structure. A Janajati group has the following characteristics:

- A distinct collective identity
- Own language, religion, tradition, culture and civilization; own traditional egalitarian social structure
- Traditional homeland or geographical area
- Written or oral history
- Having “we-feeling”
- Have had no decisive role in politics and government in modern Nepal;

- Who declare themselves as Janajati”

The Task Force formed by His Majesty’s Government for the Establishment of the Foundation for the Upliftment of Nationalities in its report which was submitted in 1996 identified a total of 61 “Adivasi Janajatis”.<sup>7</sup> But the National Foundation for Development of Indigenous Nationalities<sup>8</sup> and the National Committee for Development of Nationalities identified only 59 Janajatis or Indigenous Nationalities (published in Nepal Rajpatra, 2 February 2002). Of them, 18 groups are from the Mountain, 23 groups from the Hill and 7 groups from the Inner Terai and 11 groups from the Terai.<sup>9</sup>

The 59 recognized indigenous nationalities of Nepal are:

- |                          |                        |
|--------------------------|------------------------|
| 1. Kisan                 | 2. Kumal               |
| 3. Kushwadiya            | 4. Kushunda            |
| 5. Gangai                | 6. Gurung              |
| 7. Chepang               | 8. Chhantyal           |
| 9. Chhaintrotan          | 10. Jirel              |
| 11. Jhangad              | 12. Dolpo              |
| 13. Tangbe               | 14. Tajpuriya          |
| 15. Tamang               | 16. Tin Gaunle Thakali |
| 17. Topkegola            | 18. Thakali            |
| 19. Thami                | 20. Tharu              |
| 21. Thudam               | 22. Danuwar            |
| 23. Darai                | 24. Dura               |
| 25. Dhanuk<br>(Rajbansi) | 26. Dhimal             |
| 27. Newar                | 28. Pahari             |
| 29. Free                 | 30. Bankariya          |
| 31. Baramo               | 32. Bahra Gaunle       |
| 33. Bote                 | 34. Bhujel             |
| 35. Bhoté                | 36. Magar              |
| 37. Majhi                | 38. Marphali Thakali   |
| 39. Mugali               | 40. Meche (bodo)       |

41. Yakkha	42. Rai *
43. Raute	44. Rajbansi (Koch)
45. Rajhi	46. Larke
47. Limbu	48. Lepcha
49. Lhopa	50. Lhomi (Shingsawa)
51. Walung	52. Byasi
53. Sharpa	54. Satar
55. Siyar	56. Sunuwar
57. Surel	58. Hayu
59. Hyolmo	

The Janajatis have been categorized into four groups based on economic regions: (i) Mountain Janajati, (ii) Hill Janajati, (iii) Inner-Terai Janajati and (iv) Terai Janajati.<sup>10</sup> Based on various socio-economic factors, Nepal Federation of Indigenous Nationalities (NEFIN) has classified these 59 indigenous nationalities into five major categories:<sup>11</sup>

(i) endangered groups (10): Bankariya, Kusunda, Kushbadiya, Raute, Surel, Hayu, Raji, Kisan, Lepcha and Meche;

(ii) highly marginalized groups (12): Santhal, Jhangad, Chepang, Thami, Majhi, Bote, Dhanuk (Rajbansi), Lhomi (Singsawa), Thudamba, Siyar (Chumba), Baramu and Danuwar;

(iii) marginalized groups (20) Sunuwar, Tharu, Tamang, Bhujel, Kumal, Rajbansi (Koch), Gangai, Dhimal, Bhote, Darai, Tajpuriya, Pahari, Dhokpya (Topkegola), Dolpo, Free, Mugal, Larke (Nupriba), Lhopa, Dura and Walung

(iv) disadvantaged groups (15): Jirel, Tangbe (Tangbetani), Hyolmo, Limbu, Yakkha, Rai, Chhantyal, Magar, Chhaintrotan, Tingaunle Thakali, Bahragaunle, Byansi, Gurung, Marphali Thakali and Sherpa; and

(v) advanced groups (2): Newar and Thakali.

There are still many groups in Nepal who identify themselves as “Janajati” but have

not been recognized by the government. For example, Kiratis are indigenous peoples in Nepal but are not included in the official list. Kiratis have been included within Rai.

## II. Population of Indigenous Nationalities

According to the Population Census of 2001 conducted by Central Bureau of Statistics of the Government of Nepal, the total population of Nepal is 22,73,6934. The population of the indigenous nationalities is 8.4 million, representing 37.2% of the total population. But the 2001 Census recorded only 45 out of the 59 indigenous nationalities.<sup>12</sup> Hence, the actual number of the indigenous peoples is much higher.

According to the 2001 Census, the largest groups of indigenous peoples are Magar (7.14%) followed by Tharu (6.75%), Tamang (5.64%), Newar (5.48%), Rai (2.79%), Gurung (2.39%) and Limbu (1.58%).<sup>13</sup>

The indigenous nationalities are spread out almost in every part of Nepal.

## III. Maoists’ conflict and indigenous peoples

The Maoists conflict between 1996 and 2006 claimed over 12,000 lives in Nepal. The Maoists launched their Peoples Movement in 1996 in Rolpa, the heartland of indigenous Magars. The Maoists movement soon spread to the rural Nepal mainly inhabited by indigenous peoples.

The conflict was characterised by gross and widespread human rights abuses, including abduction, torture, rape, disappearances, summary executions etc both by the security forces and the Maoists. The Maoists were also infamous for the recruitment of child soldiers and abduction of children for indoctrination.

There are no disaggregated data on the ethnicity of the victims of the Maoists conflict. Therefore, it is impossible to indicate the number of indigenous peoples killed in the conflict. However, it can be fairly concluded

that a large majority of the victims were the indigenous peoples. Indigenous peoples do not only form the bulk of the "Gorkha soldiers" of Nepal, at the same time, the Maoists sought to mobilise indigenous peoples and other oppressed groups like the Mahdeshis and Dalits by promising equality. They promised the right of self-determination.

The Maoists formed various ethnic/indigenous armed groups: Limbu Mukti Morcha, Rai Mukti Morcha, Tamang Munkti Morcha, Magar Mukti Morcha, Khambuwan Mukti Morcha etc as part of its Peoples Liberation Army. Indigenous peoples soon got embroiled in the conflict while both the same Brahmins and Chettris led the government of Nepal and the Maoists, negotiated peace deal and agreed the terms and conditions of the governances. Indigenous peoples, continue to remain, on the margins.

#### **IV. Socio-economic conditions**

The socio-economic conditions of the indigenous peoples have been deplorable. Only two nationalities viz. Newar and Thakali have been classified as "advanced groups". Other groups are marginalized and some of them are under the threats of extinction. Yet, the government does not have a holistic policy towards the indigenous peoples.

##### **a. Endangered Indigenous Nationalities**

Nepal Federation of Indigenous Nationalities (NEFIN) has identified ten groups as endangered and on the verge of extinction. They are Bankariya, Kusunda, Kushbadiya, Raute, Surel, Hayu, Raji, Kisan, Lepcha, and Meche.

Some of the indigenous groups are on the verge of extinction. According to Census 2001, out of the 45 indigenous groups, 5 indigenous groups have population only between 164 and 660; 7 groups have population only between 1,000 and 5,000; 6 groups have 5,000 -10,000; 7 groups have 10,000-20,000; and 10 groups have 20,000-100,000 population. Only 10 indigenous groups have more than 1 lakh population.<sup>14</sup>

According to 2001 Census, the five most endangered indigenous communities are Kusunda (164 persons), Kushwadiya (552 persons), Hyolmos (579 persons), Raute (658 persons), and Munda (660 persons).

For the first time, the government of Nepal included the indigenous peoples in the development process in the Ninth Five-Year Plan (1997 to 2002). The Tenth Five-Year Plan (2002-2007) also charted a broad range of policies and strategies for empowering the indigenous peoples through affirmative actions policies and programmes.<sup>15</sup> But the indigenous peoples were left excluded from development and the process of implementation of the policies/programmes, as the government seldom consulted them.

Unique social customs of the indigenous peoples also sometimes created problems for preservation of their cultural identities. The Rautes, who are one of the endangered indigenous communities, number only 658 at the Census of 2001. The Rautes are hunter-gather community and do not have a settled lifestyle. They consider it a bad omen to have themselves counted. It is a custom to leave the house if any member of the family dies in that house. In such circumstances, it becomes quite difficult to make the community to adopt a settled livelihood.<sup>16</sup>

The government has failed to adopt policies which strikes a fine balance while implementing its policies without violating the customs and traditions of the indigenous communities.

##### **b. Language and culture**

The Census of 2001 identified 92 languages in Nepal. Nepali is spoken by 48.61 per cent of the total population. But language rights activists claim that the number of Khasa/Nepali speakers has always been exaggerated by the government to legitimize its domination and expansion.<sup>17</sup>

Other major languages are Maithili (12.3%), Bhojpuri (7.53%), Tharu (5.8%) and Tamang (5.19%), among others.<sup>18</sup> At least 27 indigenous languages are presently on the verge of extinction. According to Census 2001, there were only 4 speakers of Lhomi language and 8 speakers of Chintang. Other most endangered indigenous languages recorded by 2001 census are Kurmali (13 speakers), Saam (23 speakers), Munda (67 speakers), Koche (67 speakers), Kusunda (87 speakers), Limking (97 speakers), Dungamali (221 speakers), Jerung (271 speakers), Tilung (310 speakers), Baramo (342 speakers), Kisan (489 speakers), Raute (518 speakers), Kaike (794 speakers) and Mewahang (904 speakers). In addition, the Ethnologue identified Dhukwaa (less than 100 speakers), Chulung (less than 100 speakers), Lambichong (500 speakers), Belhari (500 speakers), Napa (500 speakers), Narphu (533 speakers), Rangkas (600 speakers), Kagate (800 speakers), Bodo/Meche (938 speakers), Ponguung, and Lumba-Yakkha (1000 speakers) as most endangered languages in Nepal.<sup>19</sup>

Indigenous peoples speak almost 100 languages or dialects.<sup>20</sup> But they have been denied their linguistic rights and discriminated on the basis of their culture, language, religion and region. The Interim Constitution of Nepal has also recognized only Nepali language as the “official language” while all other languages of Nepal have been given the status of “national languages”. At least major languages of the indigenous peoples must be recognized as “official languages” for use in state affairs alongside Nepali language.

Article 17 of the Interim Constitution has made it a fundamental right for every community to “get basic education in their mother tongue as provided for in the law” and “the right to preserve and promote its language, script, culture, cultural civility and heritage”.

But the Interim Constitution does not give the minorities, whether based on religion or language, the right to establish and adminis-

ter educational institutions of their choice, which shall also receive State grants without any discrimination. The Interim Constitution also imposed an absolute ban on religious conversion.

### c. Education

Indigenous nationalities are also lagging far behind the upper caste or privileged sections of the society in literacy. Only a few indigenous groups such as Thakali, Byasi, Hyolmo and Newar are nearly as literate as the hill Brahmins (75.6%). The literacy rate of more than 30 indigenous groups is below the national average of 53.7 at 2001 census. The average literacy rate for Kusbadiya, Santhal, Jhangad and Chepang is as low as 27%. The percentage of highly educated among the indigenous peoples is very thin. Of the 3,52,000 Nepalese graduates and post-graduates, only 8.7% are indigenous people, excluding Newars. Janajatis (excluding Newars) comprise only 18.2% of the 931,500 persons who have School Leaving Certificate or its equivalent.<sup>21</sup>

About 52 per cent of the Nepal’s population does not speak Nepali language and hence non-Nepali speaking peoples are at disadvantage in terms of access to education. For most indigenous children, it becomes a dual challenge of learning their lessons (i.e. acquiring new knowledge) and learning a new language (i.e Nepali) at the same time. The main causes of high dropout among the indigenous children are the absence of a curriculum representative of Nepali’s cultural diversity and lack of teachers who can speak local languages to assist children to understand the lessons taught in Nepali.<sup>22</sup>

### d. Health

The status of health of indigenous peoples has been miserable. Yet, there is little disaggregated data on the status of the health of indigenous peoples.

There is great disparity in mortality rates and life expectancy rates among the upper

castes, indigenous peoples, Dalits and the Muslims. According to UNDP's Nepal Human Development Report 2001, the infant mortality rate for some indigenous communities was as high as 98. In comparison, the infant mortality rates among the Brahman and Chhetri were only 52.5 and 77.8 respectively.<sup>23</sup>

There is also lack of awareness about health and hygiene. In the rural areas, Newars and Brahman/Chhetris have the highest access to trained assistance during child delivery while the Dalits and the indigenous peoples have the lowest. Awareness about HIV/AIDS prevention was found to be lowest among the Muslims and the Terai Middle Caste groups. Among the indigenous peoples, Tharu women have the lowest HIV/AIDS awareness.<sup>24</sup> As per the 2001 census, 60.10% of the indigenous peoples reportedly did not have any toilet while 15.48% had modern toilet and 23.24 used ordinary toilets.<sup>25</sup>

#### **e. Access to and control over resources**

Indigenous peoples depend largely on natural resources for their survival. But their survival has been threatened with restrictions on the use of natural resources in their ancestral lands. They are often evicted from their homes. They have limited livelihood opportunities.

According to Nepal Human Development Report of 2004, nearly 80% of them are marginal farmers having less than 1 acre of land or small farmers having 1-2 acres of land. Only 2.8% of the Tharu, 0.32% of the Tamang, 0.76% of the Rai and 0.63% of the Magar communities own more than 10 acres of land.<sup>26</sup> Many indigenous nationalities such as Bankariyas do not have land. They have to depend on the forests or work as labourers for their survival. They suffer from acute poverty and food scarcity.

UNDP's Nepal Human Development Report 2004 rightly stated, "Indigenous people also experienced violations of their inherited rights to natural resources and abrogation of

their traditional land tenure systems, along with expropriations of their lands, displacements from their traditional homelands and heavy taxes, including a number "collected" in unpaid labour. The promulgation of state/royal orders, rules and regulations before 1951 and the enactment of various laws afterwards also limited their access to natural resources such as forests, pastures, rivers, ponds, and wildlife. Development efforts tended to add to their marginalization; malaria eradication in 1950s caused an influx of hill people into Terai and the new settlers, primarily upper-caste hill people, pushed the original local inhabitants off holdings they had worked for centuries. National park projects also displaced several indigenous Tharus and other communities from their lands without adequate resettlement. All these processes resulted in the economic marginalization of these groups."<sup>27</sup>

#### **f. Employment**

Majority of the indigenous communities rely on agriculture for livelihood. Yet, one fourth of indigenous peoples are engaged in non-farming activities. The Newars, Thakalis, Arphali, Sherpas and Gurungs work in business and industries. Indigenous communities such as Raute, Kushbadiya, Bankariya, Kusunda, Chepang, Hayu etc are engaged in traditional forms of livelihood such as hunting, gathering and shifting cultivation.

Among indigenous communities, only Thakalis and Newars are privileged as far as their involvement in prestigious white-collar occupations are concerned. According to 2001 census, Thakalis represented 8.24% and Newars represented 6.39% of the legislators, senior officials, managers and professionals as against Hill Brahmins' 9.09% representation. During 2001-2002, Newars represented 8.7%, while other indigenous peoples (except Newars) represented merely 0.5% in gazetted third class officers in government services against upper caste Chhetris representation of 87%.<sup>28</sup> This shows deprivation of the indigenous peoples.

The indigenous peoples comprise only 2.3% of the total gazetted positions in government.<sup>29</sup>

According to Nepal Human Development Report 2003, life expectancy among the indigenous peoples was 53 years and adult literacy rate was 35.2. The per capita income of indigenous peoples was NRS. 6,609.<sup>30</sup>

#### **g. Lack of citizenship**

Many endangered indigenous nationalities such as Kusunda, Raute, Bankariya, Raji, Kuswadiya and Bankariyas do not have citizenship certificates.<sup>31</sup>

### **V. Indigenous people's participation in governance**

#### **a. Representation in politics**

According to 2001 census, Chhetris were 15.8%, Brahmins were 12.74%<sup>32</sup> while combined population of 45 indigenous nationalities out of total 59 was 37.2% of the total population. Clearly, the indigenous nationalities are the majority. But the numerically minority Brahmins and the Chhetris dominate the governance of Nepal.

In 1990, Nepal became a multi-party democracy and its Constitution described Nepal as "multi-ethnic, multi-lingual and democratic" and that declared that all its citizens are "equal irrespective of religion, race, gender, caste, tribe or ideology". Yet, from the local bodies to the parliament, indigenous peoples have been denied equitable representation. Because they are subordinate to the upper castes, indigenous peoples do not have a voice in the policy-making/ decision-making processes.

Out of the 205 Members in the House of Representatives (Lower House), the indigenous nationalities (except Newars) comprised 23.4% against 37.6% of Brahmin and 19% of Chhetri in 1991, 18.5% against 41.9% of Brahmin and 19.5% by Chhetri in 1994, and 17.1% against 37.6% of Brahmin and 21.5% of Chhetri in 1999. Even the Newars, who are the privileged among the indigenous peoples,

had representation below 10 per cent. The Newars' representation was 6.8% in 1991 Parliament, 6.3% in 1994, and 6.8% in 1999. The percentage of other indigenous nationalities decreased from 23.4% in 1991 to 18.5% in 1994 to 17.1% in 1999. Dalits had no representation at all in the House of Representatives during 1991-1999. All the important portfolios were occupied by the upper castes in the Council of Ministers. From the indigenous peoples, only Marich Man Singh Shrestha, who belongs to Newar indigenous community, could achieve the highest post of the country i.e. the Prime Minister of Nepal.<sup>33</sup> Mr Shrestha was the Prime Minister of Nepal from 15 June 1986 to 6 April 1990.

It is only at the local level that the indigenous peoples are fairly represented. In District Development Committees (DDCs), Newar indigenous peoples represent 4.5% and other 58 indigenous communities represent 26.6% against 0.4% representation by Dalits out of 1,203 posts. The "high castes" (Bahuns and Chhetris) still dominate the DDCs with 65.6%. Out of total 75 Chairpersons, 57 are Bahun/Chhetri, 5 Newars and 13 other indigenous peoples except Newars. Out of 73 Vice-Chairpersons, 45 are Bahun/Chhetris, 5 Newars and 23 are other indigenous peoples except Newars. Out of 1,055 Illaka (Area) members, 686 are Bahun/Chhetris, 45 are Newars, 283 are indigenous peoples except Newars, 6 are Dalits and 36 are from other marginalized groups. In VDCs where non-indigenous population such as Bahun and Chhetris are in majority, indigenous peoples do not have much say in the governance issues.<sup>34</sup>

Women's representation in the House of Representatives was only 3.4% in 1991, 3.4% in 1994 and 5.8% in 1999.<sup>35</sup>

#### **b. Representation in judiciary**

The representation of the indigenous peoples in the judiciary has been marginal.

<b>Supreme Court</b>		<b>Appellate Court (In 16 Ilakas)</b>		<b>District Court (In 75 districts)</b>	
Representative of caste and ethnic	%	Representative of caste and ethnic	%	Representative of caste and ethnic	%
1. Brahman/ Chhetri	85.0	Brahman/ Chhetri	79.0	Brahman/ Chhetri	86.0
2. Newar	15.0	Newar	14.0	Newar	9.7
3. Indigenous Nationalities	0.0	Indigenous Nationalities	1.1	Indigenous Nationalities	1.3
4. Others	0.0	Others	5.9	Others	3.0
<b>Total percentage</b>	<b>100</b>	<b>Total percentage</b>	<b>100</b>	<b>Total percentage</b>	<b>100</b>

The Supreme Court has been dominated by “high castes” such as Bahuns and Chhetris and indigenous Newars. Yet, Newars are clear minority in the Supreme Court. In a paper delivered in December 2005 at a conference organised by the International Labour Office, Mr Sankar Limbu of Lawyers Association for Human Rights of Nepal’s Indigenous Peoples, stated out of 20 judges in the Supreme Court, only 3 were Newars while 17 were “high castes”. In Appellate Court, out of total 94 judges, 79 were “high castes”, 14 Newars and 1 was Rai. In the District Courts, out of total 134 judges, 116

judges belonged to “high castes”, 13 Newars, 2 Rai, and 1 each from Tharu, Gurung and Tamang.<sup>36</sup>

Although Nepal is a multi-lingual country, Khasa/Nepali language is the only official language used in the Court. Therefore, indigenous peoples who cannot speak Nepali at all are denied access to justice.<sup>37</sup>

There were 1,578 Advocates and 1,683 Pleaders (including Newar) belonging to indigenous communities who were registered with the Nepal Lawyers’ Council.<sup>38</sup> ■

## 9. Twenty Points Agreement between the NEFIN and the government of Nepal

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The text of the 20-point agreement signed by the government of Nepal and NEFIN on 7 August 2007 is given below:

While nominating candidates for the first-past-the-post electoral system arranged for the constituent assembly election in the present constitution, candidacy will be determined so as to ensure proportional representation of all castes and janajatis.

While preparing a proportional list, all political parties participating in the election will make arrangements to ensure representation of each of the listed indigenous janajati communities.

In case a listed indigenous janajati group is unable to secure its representation through both electoral systems, the Government of Nepal and the eight parties will reach a mutually acceptable conclusion in order to ensure that there is at least one representative of such a group and that the representation is legal and constitutional.

A state restructuring commission will soon be formed to present recommendations to the constituent assembly regarding a federal state structure based on ethnicity, language, geographic region, economic indicators and cultural distinctiveness while keeping national unity, integrity and sovereignty of Nepal at the forefront. The commission will include indigenous janajatis, Madhesis, dalits, women and eminent experts from various groups, regions and communities.

A commission for indigenous janajatis will be formed.

While so far only Nepali has been recognised as the government's official language, the constituent assembly will also make arrangements to give recognition to locally spoken mother tongues along with Nepali. The government will remain committed towards ensuring linguistic rights of its citizens.

Arrangements will be made for the general public to seek and receive information on matters of public importance, including the constituent assembly, in their respective mother tongues.

The Government of Nepal has agreed in principle that all groups, genders, communities, castes and ethnicities should be represented in political parties at all levels. A fully representative task-force will be formed immediately to conduct a study in order to ensure inclusive participation and proportional representation of all castes, ethnicities, groups, communities, genders and regions in all bodies and levels of the state.

All sectors will take initiatives to practically implement their legal and policy-level commitments to ensuring inclusive and proportional representation of all genders, classes, regions and communities, including indigenous janajatis in all bodies and levels of state.

A system will gradually be developed to receive advice and consultation from concerned groups and bodies while making important decisions regarding various groups, regions, genders and communities, including indigenous janajatis.

Arrangements will be made to immediately pass the proposal to ratify and adopt Convention 169 of the International Labour Organisation.

Appropriate steps will be immediately taken to complete the necessary legal process for adopting the United Nations Declaration on the Rights of Indigenous Peoples.

A District Coordination Committee for indigenous janajatis will be formed in a democratic and transparent manner. Also, high importance will be given to the involvement of the Nepal Federation of Indigenous Nationalities and the National Federation of Indigenous Women in this process.

In keeping with the spirit and sentiment of gender mainstreaming in development plans and programmes, including interim planning, and paying attention to women and diversity in programme implementation and profit sharing, emphasis will be laid upon participation of women from indigenous janajati, dalit and Madhesi groups.

As party to the Convention on Biodiversity, the country will ensure that the traditional knowledge, skills, practices and technology of indige-

nous janajatis are harnessed and preserved.

The country will honour the renowned geographer Dr. Harka Gurung.

Arrangements will be made to provide Rs. 1 million each as relief and compensation to the families of all the Nepalis who died in the helicopter crash in Ghunsa, Taplejung.

The process started by the government to find a permanent solution to the problems faced by freed kamaiyas (bonded labourers) be taken forward in an effective manner as per the agreement.

The government will make a serious effort to reach an agreement for addressing the demands of various groups and communities, including Madhesi, women and dalits through talks and discussions with the respective groups.

Nepal Federation of Indigenous Nationalities, Indigenous Nationalities Joint Struggle Committee and National Indigenous Women Federation request all indigenous communities in the country to unite for the success of the upcoming constituent assembly election. ■

## 10. Agenda of the conference

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### DAY I

#### Opening Session: 9 am to 11 am

Registration of the participants

Welcome by Chandra Kulung

Inaugural speech: Dr. Jagadish Chandra Pokhrel, Vice Chairman of National Planning Commission of Nepal

Nepal's compliance with international standards, by Mr Bijoy Subba, Member of Parliament, UML

Regional Perspectives - Dr Sukendu Debbarma, President, Asian Indigenous Peoples Pact

Rationale of the seminar by Mr Suhas Chakma, Director, Asian Centre for Human Rights

**11. am to 11.15 am:** Tea Break

**Working session I:** Transition in Nepal  
Chair: Chaitanya Subba

11.15 a.m to 1.15 pm

Present status of the indigenous peoples in Nepal - Dinesh Ghale, LAHURNIP

The interim constitution and issue of federalism: Indigenous perspectives by Dr Om Gurug, Advisor, NEFIN

Interim Constitution and the issue of federalism by Mr Mitharam Bishwakarma, Member of Parliament

The Status of Indigenous Women in Nepal, Ms Lucky Sherpa, President Himalayan Indigenous Women's Network

Questions and answers

13.15 p.m. to 15.00 p.m: Lunch

**Working session II:**  
The Role of National Institutions on Indigenous Peoples  
15. p.m. to 16.30 pm:

Presentation by Representative of OHCHR-Nepal  
Leena Sund

National Foundation for Development of Indigenous Nationalities - Ms Sarina Gurung

NFDIN: The need for rights perspectives by Chandra Kulung

16.30 p.m. to 16.45 p.m:  
Tea Break

16.45 p.m. to 17.15 p.m:  
Questions and answers

17.15 p.m. to 17.30 p.m.  
Presentation of recommendations by AITPN on National Foundation for Development of Indigenous Nationalities

### DAY II:

**Working session III:**  
10.00 am to 11.30 a.m.: Discussion on adoption of recommendations on NFDIN

**Strategy session:**

# 11. NFDIN Act of 2002

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## **Preliminary**

### 1. Short title and commencement :

1. This Act may be cited as National Foundation for Development of Indigenous Nationalities (NFDIN) Act, 2058 (2002 A.D.)

2. This Act shall commence at once.

### 2. Definitions : Unless the subject or context otherwise requires, in this Act, -

1. "Indigenous nationalities" 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.

2. "foundation" means the National Foundation for Development of Indigenous Nationalities established pursuant to Section 3.

3. "council" means the governing council of the Foundation constituted pursuant to Section 7.

4. "committee" means the executive committee of the council constituted pursuant to Section 10.

5. "prescribed or as prescribed" means prescribed or as prescribed in the rules made under this Act.

Establishment, objectives, functions, duties and powers of the Foundation

### 3. Establishment of Foundation :

1. A Foundation named "Foundation for Development of Indigenous Nationalities" is hereby established.

2. The central office of the Foundation shall be situated inside the Kathmandu valley and the Foundation may establish its branch office in other place according to necessity.

### 4. Foundation to be an autonomous body :

1. The Foundation shall be an autonomous and corporate body with perpetual succession.

2. The Foundation shall have its own separate seal for its work and action.

3. The foundation may acquire, use, sell and dispose or manage otherwise movable, immovable property in the capacity of a person.

4. The Foundation may, like a person, sue or be sued by its name.

5. Objectives of the Foundation : The Foundation shall have the following objectives :-

1. to make overall development of the indigenous nationalities by formulating and implementing the programmes relating to the social, educational, economic and cultural development and upliftment of indigenous nationalities,

2. to preserve and promote the language, script, culture, literature, arts, history of the indigenous nationalities,

3. to preserve and promote the traditional knowledge, skill, technology and special knowledge of the indigenous nationalities and to provide assistance in its vocational use.
4. to cause the indigenous nationalities to be participated in the mainstream of overall national development of the country by maintaining a good relation, goodwill, and harmony between different indigenous nationalities, castes, tribes and communities,
5. to provide assistance in building an equitable society by making social, economic, religious and cultural development and upliftment of indigenous nationalities.
6. Functions, duties and powers of the Foundation : To attain the objectives under Section 5, the functions, duties and powers of the Foundation shall be as follows :-
  1. to formulate, implement or cause to be implemented the programme necessary for promotion and preservation of the language, script, literature, history, arts, culture, traditional skill and technology of the indigenous nationalities,
  2. to study and research the language, script, literature, history, arts, tradition and culture of indigenous nationalities and develop such language, script, history, arts, literature and tradition,
  3. subject to the prevailing law to protect or cause to be protected as prescribed the technology, skill and special knowledge that have been traditionally practiced by indigenous nationalities as intellectual property rights of the concerned indigenous nationalities,
  4. to publish the history and literature of the indigenous nationalities,
  5. with the assistance of other bodies concerned with language, literature, to prepare and publish or cause to be published the dictionary of the language of indigenous nationalities,
  6. to establish archives and museum that give identity of the language, culture, history, tradition of the indigenous nationalities,
  7. to establish a school that teaches the language of the indigenous nationalities at least up to primary level,
  8. with the approval of Nepal Government , to allow a foreign scholar who wants to study, research the language, culture, history, literature, arts, traditional technology to make study or research being affiliated with the Foundation,
  9. to collect and manage information pertaining to indigenous nationalities,
  10. to conduct or cause to be conducted special programmes to enhance economic and social status of the poor and backward group out of the indigenous nationalities,
  11. to establish relation with the foreign or international associations having similar objectives and to exchange cooperation with them,
  12. to provide consultancy service on indigenous nationalities,
  13. to make arrangements for broadcasting notice, news and miscellaneous programmes in the mother language of indigenous nationalities,
  14. to prepare list of the wealthy and poor indigenous nationalities having regard to the social, economic and cultural differences, verities and discrepancies existing between indigenous nationalities,

15. to do or cause to be done other necessary matters relating to indigenous nationalities to attain the objectives of the Foundation.

Provisions relating to Governing Council and Executive Committee

7. Constitution of governing council :

1. In order to discharge the functions required to be discharged on behalf to the Foundation there shall be a governing council as follows as the supreme body of the Foundation :-

- (a) Prime Minister Chairman
- (b) Minister/State Minister of the Ministry of Local Development Co-chairman
- (c) One person nominated by the chairman of the council from among three indigenous nationalities recommended by a recommendation committee formed under sub-section (2) from among the persons who have made remarkable contribution to the upliftment and development of indigenous nationalities, Vice Chairman
- (d) Six persons on party representative basis as prescribed from among the indigenous nationalities members representing in the House of Representatives, Member
- (e) Three indigenous nationalities members of the National Assembly as prescribed having regard to the structure of the National Assembly Member
- (f) Vice-chancellor of the Royal Nepal Academy or a member designated by him Member
- (g) Member, National Planning Commission, (looking after the concerned matter) Member

- (h) Secretary, Ministry of Local Development Member
- (i) Secretary, Ministry of Finance Member
- (j) Secretary, Ministry of Culture, Tourism and Civil Aviation Member
- (k) Secretary, Ministry of Education and Sports Member
- (l) Persons nominated by the Co-chairman, on recommendation of the federation of the indigenous nationalities out of the unions and associations of the indigenous nationalities referred to in the schedule affiliated to the federation, one person from each indigenous nationalities and in the case of indigenous nationalities, if there exists any, not affiliated to the federation of indigenous nationalities one person each from such indigenous nationalities, Member
- (m) Ten women nominated by Nepal Government two from each development region from among the indigenous nationalities women who have contributed to the upliftment of the indigenous nationalities, Member
- (n) Two persons nominated by Nepal Government from among the tradesman, industrialists and donor of the indigenous nationalities community, Member
- (o) Members of the executive committee Member
- (p) Person nominated by the Co-chairman of the council on recommendation of the Vice-chairman of the council from among the persons of indigenous nationalities who have made special contribution to the upliftment of indigenous nationalities Member- secretary

8. Meeting and decision of council :
1. The meeting of council shall take place twice a year on such date, time and place as specified by the Chairman of the council.
  2. The Chairman of the council shall preside over the meeting of the council. In his absence, the Co-chairman and in the absence even of him the Vice chairman of the council shall preside over the Meeting of the council.
  3. The presence of at least fifty percent member out of total members of the council shall be deemed to have constituted the quorum for the meeting.
  4. The decision of majority of vote shall be deemed to be the decision of the council. In case of tie of votes in the meeting the presiding persons may exercise a casting vote.
  5. The decision of the meeting of the council shall be certified by the member secretary.
  6. Other procedures relating to the meeting shall be as determined by the council itself.
9. Functions, duties and powers of the council
1. The work to be done and power to be exercised by the Foundation under this Act shall be done and exercised by the council.
  2. Without prejudice to generality of sub-section (1), the functions, duties and power of the council shall be as follows :-
    - (a) to formulate the policy of various programmes and project to be operated by the Foundation,
    - (b) to approve the annual and periodic plan of the Foundation,
    - (c) to approve annual budget of the Foundation,
    - (d) to evaluate the programmes and projects operated by Foundation,
    - (e) to approve the by-rules to be framed by the Foundation,
    - (f) to do other work as prescribed.
10. Constitution of Executive Committee :
1. In order to discharge the daily work of the council subject to this Act or rules made under it and the general directions of the Foundation there shall be an executive committee as follows:-
    - a. Vice chairman of the council  
Chairman
    - b. Two persons including one woman nominated by the Chairman on recommendation of the Co-chairman of the council from among at least five members including one women recommended by a three member recommendation committee from among the experts who have made special study, research on indigenous nationalities or the persons from among the indigenous nationalities who have made remarkable contribution in the upliftment of indigenous nationalities. Provided that the recommendation committee shall not recommend the name from among themselves. Member
    - c. An officer at least of Joint- secretary level of the Ministry of Local Development designated by that Ministry Member
    - d. Member secretary of the council  
Member Secretary
  2. The tenure of the office of the members referred to in clause (b) of sub-section (1)

shall be of four years.

11. Meeting and decision of committee :

1. The meeting of the committee shall take place according to necessity on such date, time and places specified by the Chairman of the committee.
2. The Chairman of the committee shall preside over the meeting of the committee and in his absence, the senior most member in term of nomination from among the members nominated shall preside over the meeting.
3. National or foreign experts and a person concerned with the programme and project of the Foundation may be invited in the meeting of the committee according to necessity.
4. Other procedures concerning the meeting of the committee shall be as prescribed.

12. Functions, duties and powers of the committee : In addition to the functions mentioned elsewhere in this Act, the functions, duties and powers of the committee shall be as follows :-

1. to implement or cause to be implemented the decision of the council,
2. to prepare periodic and annual programmes, project and budget of the Foundation and submit to the council,
3. to manage and operate the fund of the Foundation,
4. to have the account of the Foundation audited and to submit the report thereof to the council,
5. to prepare draft of the by-rules to be framed by the Foundation and submit to the council,

6. to do or cause to be done other works as prescribed to attain the objective of the Foundation subject to the direction given from time to time by the council.

13. Provision concerning the conditions of service of the Vice chairman council :

1. The Vice chairman of the Foundation shall be the full time chief executive officer of the Foundation.
2. The remuneration, facilities and other conditions of service of the Vice chairman shall be as prescribed.

14. Provision concerning the conditions of service of member secretary of the council :

1. The member-secretary of the council shall be the full time executive officer of the Foundation and he shall do work under general direction of the Vice chairman.
2. The remuneration, facilities and other conditions of the service of the member-secretary of the council shall be as prescribed.

15. Sub-committee or task force may be constituted :

1. The council or committee may constitute a sub-committee or task force according to necessity.
2. The functions, duties, powers, procedure and facility of the sub-committee or task force constituted under sub-section (1) shall be as specified by the council or committee. Fund, account and audit of the Foundation

16. Fund of the Foundation

1. The Foundation shall have its separate fund.

2. The following amounts shall be credited to the fund:-

1. amount received from Nepal Government,
2. loan amount received from a foreign government or international union and association,
3. donation, assistance, grant or any other amount to be received from a foreign government or international union and association or person,
4. amount received as donation, assistance from a person or association,
5. amount received for the service made available by the foundation,
6. amount received from any other sources.

3. The Foundation shall be required to obtain the approval of Nepal Government to receive the amount under clause (b) of sub-section(2) and shall be required to give pre information to Nepal Government to receive the amount under clause (c).

4. All expenses to be incurred by the Foundation shall be borne from the fund under sub section (1).

5. All amount to be received by the Foundation shall be deposited into a bank by opening an account in the name of the Foundation in such bank.

6. The operation of the account of the fund of Foundation shall be as prescribed.

17. Account and audit there of :

1. The Foundation shall maintain accounts of its income and expenditure as per the prevailing law.
2. The audit of the Foundation shall be per-

formed by the Department of the Auditor General. Miscellaneous

18. Act and action not to be deemed illegal: Notwithstanding anything contained in other sections of this Act, an act and action carried out when the position of a member of the council or committee was vacant shall not be deemed illegal on account of that ground only .

19. Delegation of power :

1. The council may delegate all or some powers conferred to it by this Act or rules or bye-rules made there under to the committee or Chairman of the committee or member secretary of the committee on the condition that it is exercised according to the conditions specified by it.

2. The committee may delegate all or some powers conferred to it by this Act or rules made there under to a member or member secretary or an officer employee of the committee.

20. Annual report to be submitted :

1. The Foundation shall be required to submit an annual report of its work and action within three months of the expiry of every fiscal year to Nepal Government.

2. The report under sub-section (1) shall contain, inter alia, description in brief of the work performed within one year by the Foundation, Foundation's financial status, statement of expenditure, programme or project completed and cost thereof and the problems faced by the Foundation.

3. The Foundation shall publish the main content of the report under sub-section (1)

21. Appointment of the employees of the Foundation :

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|--|---|
| <p>1. The Foundation may appoint the employees as prescribed.</p> <p>2. The appointment of the employees of the Foundation and conditions of their service shall be as provided for in the by-rules framed by the council.</p> <p>22. Nepal Government may give direction : Nepal Government may give necessary directions to the Foundation.</p> <p>23. Liaison with Nepal Government : The Foundation shall liaise with Nepal Government through the Ministry of Local Development.</p> <p>24. Power to make rule and bye-rule :</p> <p>1. The council may make necessary rules to implement the objectives of this Act.</p> <p>2. Subject to this Act and rules made there under, the council may make bye-rules in the following matters and such bye-rules shall come into force from the date on which Nepal Government approves them:</p> <p>1. internal work operation,</p> <p>2. appointment of employees and conditions of service,</p> <p>3. fiscal administration.</p> | <p>under the order will be transferred to the Foundation.</p> <p>2. All contract, agreement, lease concluded with the National Indigenous Nationalities Development Committee constituted pursuant to sub-section (1) shall be deemed to have been concluded with Foundation and all act and action carried out by that committee shall be deemed to have been carried out by the Foundation.</p> |
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**Schedule**

Relating to clause (a) of Section 2

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|--|---|
| <p>1. internal work operation,</p> <p>2. appointment of employees and conditions of service,</p> <p>3. fiscal administration.</p> <p>25. Alternation in schedule : Nepal Government, on the recommendation of the council, may alter the schedule by publishing a notice in the Nepal Gazette.</p> <p>26. Repeal and saving :</p> <p>1. The National Indigenous Nationalities Development Committee (Constitution) Order, 2054 (1997 A.D) is hereby repealed and all movable and immovable property and right and title of the National Indigenous Nationalities Development Committee constituted</p> | <p>1. Kisan</p> <p>2. Kumal</p> <p>3. Kushwadiya</p> <p>4. Kushunda</p> <p>5. Gangai</p> <p>6. Gurung</p> <p>7. Chepang</p> <p>8. Chhantyal</p> <p>9. Chhairotan</p> <p>10. Jirel</p> <p>11. Jhangad</p> <p>12. Dolpo</p> <p>13. Tangbe</p> <p>14. Tajpuriya</p> <p>15. Tamang</p> <p>16. Tin Gaunle Thakali</p> <p>17. Topkegola</p> <p>18. Thakali</p> <p>19. Thami</p> <p>20. Tharu</p> <p>21. Thudam</p> <p>22. Danuwar</p> <p>23. Darai</p> <p>24. Dura</p> <p>25. Dhanuk (Rajbansi)</p> <p>26. Dhimal</p> <p>27. Newar</p> <p>28. Pahari</p> <p>29. Free</p> <p>30. Bankariya</p> <p>31. Baramo</p> <p>32. Bahra Gaunle</p> |
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33. Bote	34. Bhujel	51. Walung	52. Byasi
35. Bhote	36. Magar	53. Sharpa	54. Satar
37. Majhi	38. Marphali Thakali	55. Siyar	56. Sunuwar
39. Mugali	40. Meche (bodo)	57. Surel	58. Hayu
41. Yakkha	42. Rai *	59. Hyolmo	
43. Raute	44. Rajbansi (Koch)	Date of affixation of Royal Seal 2058/10/25/5 (Feb. 7, 2002 A.D.)	
45. Rajhi	46. Larke		
47. Limbu	48. Lepcha	By Order, Udaya Nepali Shrestha	
49. Lhopa	50. Lhomi (Shingsawa)	Nepal Government's Secretary	

## 12. List of participants

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S.N.	Names	Designation	Organization
1	Arjun Kumal	Member	Governing Council, NFDIN
2	Arjun Limbu	Member	Governing Council, NFDIN
3	B.K.Mabuhang	Board Member	National Coalition for All Racial Discrimination (NCARD)
4	Balachandra Thulung, KWS	Volunteer	Kirat Welfare Society
5	Basant Bantawa	Member	Chi: Halamtung Bantawa Kirawa Yuvahup Nepala
6	Bhupendra Pulami Magar	President	Federation of Indigenous Nationalities' Students Associations
7	Bijay Subba	Member	Legislative Parliament
8	Binod Lama (Hyolmo)	Member	Governing Council, NFDIN
9	Binod Surel	Member	Governing Council, NFDIN
10	Bir Bahadur Lepcha	Member	Governing Council, NFDIN
11	Bomkumari Budhamagar (NFDIN-EC)	Member	Governing Council, NFDIN
12	Chaitanya Subba	Member	Nepal Planning Commission
13	Chandra Singh Kulung	General Secretary	KWS
14	Chhonduk Bhotte (Singhshawa-Lhomi)	Member	Governing Council, NFDIN
15	Chhwang Dhyamjo Lama (Larke)	Member	Governing Council, NFDIN
16	Dinesh Ghale	Advocate	Lawyers Association for Human Rights of Nepalese Indigenous Peoples
17	Gopal Singh Bohora (Shauka)	Member	Governing Council, NFDIN
18	Guru Sangpa Karani	Member	Karani Samaj Sangh, Mugu
19	Him Nachhiring	General Secretary	Aadibasi Vidyarthi Samaj

20	Hira Raj Regmi	Incharge	National Foundation for Development of Indigenous Nationalities (NFDIN)
21	Hom Yamphu	Chairperson	Yamphu Kirat Samanj
22	Ishwor Koirala	Central Executive Mem.	Human Rights Organizations of Nepal
23	Jagadish Chandra Pokharel	Vice-Chairman	National Planning Commission
24	Jagat Gurung	Planning Officer	NFDIN
25	Jip Chhiring Lama (Sherpa)	Member	Governing Council, NFDIN
26	Keshav Kulung	Central Executive Mem.	Association of Nepal Kirat Kulung Language & Cultural Development, Central Committee-1
27	Kripa Kirati	Chairperson	NIPDISC
28	Lucky Sherpa	President	Himalayan Indigenous Women Network
29	Mahesh Kormocha (Sunuwar)	Member	Governing Council, NFDIN
29	Manoj Aathpahariya	Member	Aathpahariya Rai Samaj
30	Meena Bohora (Magar)	Member	Governing Council, NFDIN
31	Min Bahadur Lama Tamang	General Secretary	Nepal Tamang Ghedung Student Union
32	Mitharam Biswakarma	Member	Legislative Parliament
33	Ms Janaki Harimbu	Executive Member	Chulachuli UNESCO Club-Kathmandu
34	Ms Krishna Waiba Tamang	President	SHRISTI
35	Ms Lena Sundh	Head	OHCHR-Nepal
36	Ms Mina Bohora	Member	Governing Council, NFDIN
37	Ms Rashmi Thapa Magar	President	Pewa Nepal
38	Ms Sangini Ranamagar	Member	Governing Council, NFDIN
39	Ms Sarina Gurung	Monitoring Officer	NFDIN
40	Ms Shanti Rai (Member of Drafting Committee of Initial Interim Constitution)	President	Lawyers Association for Human Rights of Nepalese Indigenous Peoples
41	Ms Suvarnakeshari Chitrakar	Member	Governing Council, NFDIN
42	Ms Tara Rai	Member	Governing Council, NFDIN
43	Nabin Lingden, Kirat Aawaj	Activist-Editor	Kirat Aawaj (Kirat's Voice)

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44	Norbu Ghale (Dolpo)	Member	Governing Council, NFDIN
45	Om Gurung	Advisor	NEFIN
46	Padmaratna Tuladhar	Chairman	Human Rights Promotion Centre
47	Parshuram Tamang	Member	UNPFII
48	Pasang Sherpa	President	NEFIN
49	Pasang Sherpa (Topkegola)	Member	Governing Council, NFDIN
50	Pemba Chhewang Lama (Siyar)	Member	Governing Council, NFDIN
51	Pradeep Kulung	Secretary	Cooperative Society For National Development
52	Pratap Singh Nachhiring	President	Kirat Radu Nachhiring Sakham,
53	Rajkumar Dikpal	Vice-President	Association of Nepalese Indigenous Nationalities Journalists
54	Rajkumar Siwakoti	General Secretary	FOHRID, General Secretary
55	Raju Chamling	Secretary	Association of Kirat Chamling Language and Cultural Development
56	Ram Bahadur Thapa	President	Indigenous Lawyers Council Nepal (ILCN)
57	Ramji Bahing	President	Bahing Kirat Mulukhim
58	Santosh Chakma	Coordinator	AITPN
59	Shakuntala Chhenho	Acting President	Kirat Welfare Society
60	Suhas Chakma	Director	ACHR
61	Sujeen Lohorung	Member	Lohorung Yakkhaba Yuyong
62	Sukendu Debbarma,	President	Asia Indigenous Peoples Pact
63	Surendra Shrestha	Member	SAGUN
64	Tahal Bdr. Jirel	Member	Governing Council, NFDIN
65	Uday Ghising (Tamang)	Member	Governing Council, NFDIN
66	Yam Bahadur Kulung	President	NGO -Federation of Nepalese Indigenous Nationalities (NGO-FONIN)

## Endnotes

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- 1 . Section 9 of Human Rights Commission Act of 1997
- 2 . National Dalit Commission formed, The Kathmandu Post, 20 March 2002
3. Nepal Human Development Report 2004,  
[http://hdr.undp.org/docs/reports/national/NEP\\_Nepal/Nepal\\_2004\\_en.pdf](http://hdr.undp.org/docs/reports/national/NEP_Nepal/Nepal_2004_en.pdf)
4. Nepal changes into federal state, BBC News, 9 March 2007,  
[http://news.bbc.co.uk/2/hi/south\\_asia/6435901.stm](http://news.bbc.co.uk/2/hi/south_asia/6435901.stm)
5. Article 2 of the Act
6. Population Monopoly of Nepal 2003, Vol. I, Chapter 3, available at  
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The Asian Indigenous and Tribal Peoples Network (AITPN) is an alliance of indigenous and tribal peoples' organisations and individual activists across the Asian region. It seeks to promote and protect the rights of indigenous and tribal peoples in Asia:

- by providing accurate and timely information to national human rights institutions, the United Nations and its specialised mechanisms, as appropriate;
- by conducting research, campaigning and lobbying on country situations or individual cases;
- by increasing the capacity of indigenous peoples through relevant training programmes for indigenous peoples' rights activists and community leaders;
- by providing legal, political and practical advice to indigenous peoples organisations;
- by providing input into international standard-setting processes on the rights of indigenous peoples; and
- by securing the economic, social and cultural rights of indigenous peoples through rights-based approaches to development.

AITPN has Special Consultative Status with the United Nations Economic and Social Council (ECOSOC).

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**This report has been published  
with the financial assistance from the  
European Commission**



European Union