

Convention on the Rights of the Child Shadow Report Submission: Indigenous Children's Rights Violations in Nepal

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CRC Alternative Report Submission: Nepal

I. Reporting Organization

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*; and on its website: www.cs.org.

II. Background Information

Of the total 27.8 million population of Nepal, the population of children under 18-years stands approximately 11.8 million, representing 44.4 percent of the total population of Nepal.¹ Total population of children under 14 years of age is 31.6 percent. The population of Indigenous children stands at 36 percent of the total population of children, or 4.3 million. A large portion of the population of Nepal (37 %) is under age 15, while 11% population are under 5-years. There is a smaller portion of children under 5 years in urban than rural areas². Indigenous peoples consist of 37.2% of the total population of Nepal. The Nepalese government recognizes 59 Indigenous groups. In a 2011 report, the UN estimated that of the Indigenous Peoples in Nepal, 0.5 million people to are endangered and highly marginalized.³

During the decade-long conflict between the Maoists and the Government of Nepal, which ended with the Comprehensive Peace Agreement in 2006, over 10,000 children became victims of human trafficking for military purposes and served as child soldiers in the Maoist army. There is a long history of Nepali Indigenous Peoples' struggle against state oppression, exclusion and discrimination. Discrimination and oppression by the state has a direct effect on children.

II. Situation analysis- Continuing Rights Violations of Indigenous Children

A. Violations of Indigenous Children's Constitutional Rights.

The New Constitution of Nepal has not recognised the rights of Indigenous Peoples as enshrined in UNDRIP. The constitution declares Khas Nepali language in Devanagari script as the official and medium of instruction language though Nepal is a multilingual country. Indigenous Peoples' right to education in their mother tongues appeared to be recognised in the constitution but without State's responsibility to implement. It has just mentioned that the indigenous community

¹ national population and housing census 2011 CBS, Nov. 2012

² CWIN, state of rights of child in NEpal 'Annual Report' National Resource and Information Center, CWIN, Nepal

³ National Human Rights Commission Office of the Special Rapporteur on Trafficking in Women and Children, "TRAFFICKING IN PERSONS ESPECIALLY ON WOMEN AND CHILDREN IN NEPAL," 2012

can run the school on its own. Indigenous children also are deprived of their right to information in their mother tongues and access to media in their mother languages.

B. Citizenship rights: Discrimination of children born to Nepali man and Nepali women married to foreigner

The child of a Nepali woman can only obtain naturalised citizenship if married to foreigner. On the one hand Nepali women have the right to marriage, which includes the right to marry of one's own choice, whether the spouse is Nepali or foreign. But if the spouse is a foreigner, the children of Nepali women are only entitled to naturalised citizenship under Article 11.7, whereas the children of Nepali men married to a foreign spouse are entitled to citizenship by descent. Thus, for the children of Nepali citizens, there is a bias in their treatment based on their birth to a Nepali woman.

Constitutional rigidity and discrimination applies only to Nepali daughters. Although the concept paper for the drafting of the citizenship provisions clearly calls for applying the principle of non-discrimination and rigidity equally, rigidity is only applied to Nepali daughters and explicit discrimination is made only to the children and spouses of Nepali women. In the case of family of mixed nationality, the right of non-national family is to be enjoyed on equal basis; however, under the new constitution such provisions have not been made. Also naturalization is not a matter of right in Nepal, it is at the discretion of the state. Inequality is also perpetuated on citizenship by naturalization in other entitlements under the constitution.

C. Early Child Marriage

UNICEF's The State of the World's Children 2011 ranked Nepal among the top ten countries where child marriage occurs. In Nepal, the legal age of consent for marriage is 20 for men and 18 for girls. Despite this, 51 percent of girls are married before the age of 18 either with their consent and/or as a result of family pressure.⁴ Of the total female population of the age group 15-18, 23.1% of the girls are married and 39% of girls conceive a child by the age of 19.⁵

The organization Child Workers in Nepal reports a growing number of child marriages; 54 cases in 2014 and 60 in 2015. They attribute these high numbers to a vicious cycle of poverty among children, low rates of education, poverty, school dropouts, and domestic violence.⁶ These issues are compounded for Indigenous children who disproportionately experience discrimination in public education, poverty, and high dropout rates.

⁴ UNICEF, 2011 Report

⁵ Nepal Demographic Health Survey (NDHS) report, 2011 MoH

⁶ CWIN, 2015, unpublished annual report

Early and forced marriage has led to suicide among adolescent girls; suicide is in fact the leading cause of death for women of reproductive age in Nepal.⁷

As Early Child Marriage was selected as a Sustainable Development Goal, much attention and funding will be focused on this issue in coming years. Special attention must be taken to include Indigenous Peoples in the development of policies and strategies aimed at addressing this phenomenon in order to develop realistic alternative traditions and solutions to child marriage from within communities rather than from the outside.

D. Child Health

In 2015 Nepal had an under-5 mortality rate indicator (death of children under 5 years of age) of 36 per 1000 live births according to World Development Indicators, while the neonatal mortality rate (death of children aged less than 23 days) is 33 per 1000 live births, which accounts for 61% of under 5-deaths. Infant mortality rate (less than one year) is 46 per 1000 live births.⁸ Most of these deaths are preventable and treatable. Factors affecting Indigenous women's access to maternal care in Nepal include the availability of culturally competent care by qualified providers. Multiple long term studies have shown that Cultural inappropriateness of care, disrespectful and inhumane services, and lack of emotional support, can deter women, particularly Indigenous women, from accessing obstetric care.⁹

Malnutrition is regarded to be a dominant cause of death among children. Access to safe water and hygiene is largely absent in rural areas, where Indigenous populations mostly reside. The mortality rates among Indigenous children tends to be higher than that of the general population. The most concerning issue in Nepal is related to health services and their quality in rural areas and the inadequate allocation made by the government for child health, especially to Indigenous children whose families were most affected by the 2015 earthquakes. The government has guaranteed basic health care for free, but many estimate that nearly 40 percent of the population in Nepal still lack access to primary health care.

Stunting of children under 5-years is 37%, under-weight prevalence is 30%, wasting prevalence is 11%, exclusive breastfeeding of infants under 6 months is 57%.¹⁰

1.94% of the total population of 26,494,504 are suffering from some kind of disabilities, of which 45.44% are female and 54.56% are male. Higher disability rates are associated with higher rates of

⁷ Joint press release of UNICEF. http://www.unicef.org/media/media_68114.html . NEW YORK, 7 March 2013.

⁸ CBS 2014, Nepal multiple indicator cluster survey 2014, Key findings, Kathmandu, Nepal: CBS and UNICEF Nepal

⁹ Karkee, Lee and Pokharel, Women's perception of quality of maternity services: a longitudinal survey in Nepal, BioMed Central Ltd. 2014

¹⁰ Central Bureau of Statistics *ibid*

illiteracy, inadequate nutritional level, lower immunization coverage, higher unemployment and underemployment rates and lower mobility.¹¹

E. Right to Education

Article 28 of the CRC provisions that state parties recognize the right of every child to education, including free primary education. But in Nepal Indigenous children have low school enrollment rates, and when they do attend school, they tend to have less support to perform well. High illiteracy of their parents, low relevance of content (as learning materials are not available in their languages) are both strong contributing factors to low academic performance. One of the reasons leading to the exclusion of Indigenous children from school is the curricula, language and teaching methods, which are culturally and linguistically inappropriate or the language of instruction is unknown to the Indigenous child.

Little more than 50 percent of children go to school. 41% of Indigenous children have to manage both school and work.¹² UNESCO estimates that only 7 out of 10 children enrolled in grade 1 in school reach grade 5 and more than half of them drop out of school before reaching the lower secondary level (up to grade 8). The total number of students at primary level, lower secondary and basic level is 4,576,693, 1,823,192 and 6,399,885 respectively. The net enrollment rate at Primary, lower secondary and basic level is 95.3%, 72.2% and 87.5%.¹³ Among the children of school-going age, 86% attend primary or secondary level school. Only two-thirds of secondary school age children actually attend secondary or a higher form of education (66%).¹⁴

The Government of Nepal has formed Multilingual Education Implementation Guidelines in 2009, which aim to implement multilingual education in 7,500 schools by 2015. However, such education has reportedly been implemented in only 24 schools so far citing lack of resources. Further, the Government's Multilingual Education programme also includes language education as Multilingual Education rather than education provided using native languages as the medium of instruction. Further, Nepali language is still the only official medium of instruction and the language education a compulsory subject in higher education in public education system, which create obstacles for Indigenous peoples in accessing education and disadvantages them and other communities that do not speak Nepali as their first language. Many Indigenous children do not have a good command of the Nepali language and language is thus one of the main barriers in Indigenous children's pursuit of education and a primary reasons for high dropout rates, which has been shown to lead to early child marriage, trafficking, and poverty.

¹¹ National Federation of the Disabled-Nepal 'Disability Rights Holistic Monitoring Report, 2013' Monitoring

¹² A study on the socio-economic status of Indigenous Peoples in NEpal, LAHURNIP, 2014

¹³ Flash Report 2012/2013), Nov. 2012, DoE, MOE, Govt. of Nepal

¹⁴ *ibid*

Highly marginalized Indigenous groups, such as the Chepang, experience extreme educational discrimination contributing to low literacy levels. As the Nepal Chepang Association (NCA) has reported that less than 25% Chepangs are literate while the national adult literacy rate stands at 57%. In addition, only 1% of Chepang women know how to read and write, well below the national average of around 50%.

The government must respect all children's right to education, and specifically Indigenous children's right to education in their own language and culture, as stipulated in Article XX of the UN Declaration on the Rights of Indigenous Peoples. Nepal must emphasize and prioritize multilingual education policies and programs and develop an education system and curricula that is inclusive of Indigenous Peoples' history, culture, and knowledge/skills.

Indigenous Peoples are seriously concerned about the quality of education. They want an educational system that mirrors them, their languages, and cultures, and one which will help them progress in culturally relevant ways.

F. Violence Against Children

Violence against children is a very commonly experienced in Nepal. 24% of adolescents and youth face physical violence from one of their family members.¹⁵ According to Nepal's own report "The state of Children of Nepal 2013" by the Ministry of Women Children and Social Welfare, published in 2013, 95% of the girls are exposed to various forms of sexual abuse. Most of them are abused at home, in educational institutions, or workplaces.

Violence against Indigenous children in schools has been shown to be another major contributing factor in high dropout rates.¹⁶ In Nepal, 14 percent of children claimed to have dropped out of school because they feared the teacher.¹⁷ Students from different ethnic groups who find the contents of the syllabus culturally unfamiliar or confusing and their resulting alienation is manifested in aggression, withdrawal, or other self-defeating behavior. Corporal punishment cannot effectively address such problems. It will rather exacerbate the difficulties further, causing students to stay away from classes or even drop out of school. A report by the Child Workers in Nepal Concerned Centre recorded 203 cases in the year 2004. They found that in average schools of Nepal, innocent children are insulted and given physical and mental torture as common discipline. It is necessary to follow a set code of conduct and also raise awareness among teachers on subject matters of child rights. In a study conducted by UNICEF, students reported that the degree of

¹⁵ Ministry of Health and Population (MoHP) [Nepal] 2012, *Nepal Adolescents and Youth Survey 2010/11*. Kathmandu, Nepal: Ministry of Health and Population.

¹⁶ VIOLENCE AGAINST CHILDREN IN NEPAL SERIES 2 A Study of the System of School Discipline in Nepal Prepared by Center for Victims of Torture (CVICT), Nepal (2004) Supported by UNICEF, Nepa

¹⁷ The Mahbub ul Haq Human Development Centre, HUMAN DEVELOPMENT IN SOUTH ASIA, Oxford University Press, 1999

corporal punishment by teachers depends on their particular gender, location and ethnicity, among other factors.¹⁸

G. Trafficking of Indigenous Girls, Women, and Boys

As per the 2004 National Human Development Report on Nepal by the United Nations Development Programme, at least 12,000 girls and women are trafficked annually in Nepal, of whom one-fifth are under the age of 16. In the year 2012-13, the National Human Rights Commission (NHRC) estimated that nearly 29,000 persons were trafficked or attempted to be trafficked. The Trafficking in Persons Report (TIP) compiled by the US State Department rates Nepal as Tier 2, meaning, “The government does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.”

Indigenous girls in Nepal face multi-layered discrimination on the grounds of gender, ethnicity and poverty, and are disproportionately subjected to various forms of violence, in particular sex trafficking. The National Human Rights Commission 2011 report found that women and children in rural areas and those belonging to endangered and highly marginalized Indigenous groups are the most vulnerable groups for trafficking.¹⁹

As recognized in Nepal’s State Report to Committee on Elimination of Discrimination Against Women, Indigenous women and girls are disproportionately victims of trafficking: “During 2006–07, of the 233 children rescued, 217 were girls. Of this total number, 78.55% are from ethnic groups and 12.5% from the Dalit community.” The discrepancy here is stark; Indigenous women and girls make up almost 80% of the total of these trafficked individuals although Indigenous peoples in Nepal only make up 35% of population. Thus, it is necessary to introduce measures to combat the sexual exploitation of women and girls to specifically address the causal factors that disproportionately impact on Indigenous women and girls. CEDAW acknowledged in its March 2016 Gen. Rec 34, “The economic hardships of rural life, alongside lack of information about trafficking and how traffickers operate, can make Indigenous rural women especially vulnerable, particularly in conflict affected regions.”

Indigenous boys also face high risk of trafficking. Within Nepal, Indigenous boys in addition to girls are trafficked for domestic servitude, entertainment enterprises, embroidering industries and for street begging. Outside of Nepal boys are often trafficked to India for organ harvesting.

According to NHRC, the human trafficking occurs mainly in three areas--internal trafficking, cross-border trafficking to India, and cross-border trafficking to Korea, Hong Kong, Gulf

¹⁸ Ibid.

¹⁹ National Human Rights Commission Office of the Special Rapporteur on Trafficking in Women and Children, “TRAFFICKING IN PERSONS ESPECIALLY ON WOMEN AND CHILDREN IN NEPAL,” 2012.

countries, and Tibet.²⁰ Children are trafficked for the purpose of organ transplantation to India and for marriage in Korea and Hong Kong. 5,000 – 15,000 women and girls are trafficked annually to India for the purposes of commercial sexual exploitation. There have been ineffective cooperation mechanisms between Nepal and countries who are receiving trafficked children to counter such acts. CEDAW has urged Nepal “to intensify its efforts to address trafficking in women and girls. It recommends that its anti-trafficking strategy should include measures of prevention, the prosecution and punishment of perpetrators and increased international, regional and bilateral cooperation.” While this recommendation goes some way to addressing the complex issues in Nepal that lead to trafficking, it has not been effectively implemented and does not address the role of ethnicity of the overwhelming majority of victims.

H. Child Labor

Of the total population of approximately 7.7 million children, an estimated 3.14 million, or 40.4% are estimated to be involved in some form of child labor, and the great majority of these are Indigenous children in rural areas.²¹ Children are working in various sectors. Nepali law, as well as ILO Conventions prohibit employment of children in hazardous sectors mainly mining, road constructions, transportation, restaurants, quarries etc. A study conducted on the situation of working children at small restaurants and tea shops in Kathmandu valley in 2015 revealed that more than three quarters or 77% of the children belong to Tamang Indigenous community, three out of 20 (17%) belonged to non-Indigenous communities and a few of them were Indian.

Children in Nepal are also often involved in the Worst Forms of Child Labor despite ILO Convention 182. Two studies ordered by the Supreme Court and conducted by the Government of Nepal in 2008 uncovered that there were nearly 1,200 massage parlors, dance bars, and cabin restaurants in Kathmandu alone; employing nearly 50,000 workers, including 9,000-15,000 of them who are underage. 621,000 children are estimated to be engaged in hazardous work, and girls in particular are more likely than boys to be engaged in this kind of work.

Women from Indigenous groups that suffered extreme abuses in the past continue to face a severe legacy of those abuses, and their young daughters are implicated in this cycle. For example, it is often reported that extremely limited life chances and hardships have led Indigenous Tharus, who in the past were exacted as bonded agricultural laborers (Kamaiyas), to recourse to some moderate form of bonded labour, while their daughters continue to serve as Kamalaris (bonded housemaids) though in less coerced form. Both Kamaiya and Kamalari system are now illegal and the Government had reportedly increased vigilance against Kamalari system in 2008-9 as some cases were reported from mid-west and far-west Tarai and inner-Tarai districts and drawn attention of the concerned agencies to intensify targeted and affirmative action programmes in the areas where such

²⁰ CWIN-Nepal, Nepalese Anti-trafficking laws, review from child protection perspective, 2014

²¹ Central Bureau of Statistics, Government of Nepal and International Labour Office: Draft Nepali Child Labour Report 2010

incidents are frequently reported. However, there have been recent reports of Kamalari system existing in Tarai as well as Kathmandu.

The ILO concluded that “Poverty, inadequate education, legal and employment structures, little knowledge and awareness of society at large and parents in particular, social and cultural practices including gender related discrimination, lack of adequate child protection measures including legal policies, framework and their enforcement are all major factors related to child labor. As long as poverty, illiteracy, deficiencies in education, informal economic activities that lack legal protection and inadequate capacity of relevant institutions remain, the incidence of child labour will continue in Nepal.”²²

The Government of Nepal adopted a International Road Map in 2010 to eliminate child labor in 2020, and eliminate its worst forms by 2016; clearly not enough resources have been devoted to address this issue or address its root causes of poverty and discrimination, and it requires immediate and sustainable action by the Government of Nepal.

I. Ineffective Aid to Indigenous Child Victims of the 2015 Earthquake

A huge number of children lost their lives, got injured, went missing, and were left orphaned in the mega earthquake in 2015. Although this was not acknowledged by the government, Indigenous peoples make up the majority of earthquake victims in Nepal. Even after nearly a year, reconstruction work has not been able to take off because of the inefficiency of the State. Indigenous children, particularly babies, affected by the earthquake remain extremely vulnerable because many have lost their parents and guardians. Even those with parents or single parent are vulnerable because the lives and livelihoods of their parents have been destroyed. Indigenous children are particularly vulnerable to trafficking, abuse and exploitation in these conditions. The wellbeing of parents (and single mothers) is directly related to wellbeing of Indigenous children.

Lack of aid relief reaching rural Indigenous Peoples is also manifesting in further reduced opportunities for education for Indigenous children. Most of the Indigenous children in areas of severe earthquake damage have been deprived of proper education and are facing tremendous challenges in continuing their education. Their parents' current priority is to find the means to rebuild their homes. A large number of schools were heavily damaged or destroyed, and the makeshift learning centers that have been set up in many villages are severely inadequate. Children of displaced communities in particular face the risk of discontinuing school altogether. Lack of access to education will have long term and lasting implications for this generation of Indigenous children.

²² International Labour Organization, “Eliminating Child Labour in Nepal, Facts Figures Commitments in Action.”

III. CRC Concluding Observations

In 2005 the Committee noted in Concluding Observations:

“Non-discrimination

35. While noting that discrimination is prohibited under the Constitution and other relevant legislation, as well as the various efforts undertaken by the State party to eliminate discrimination, the Committee reiterates its deep concerns about the widely prevailing de facto discrimination against girls and children belonging to the most vulnerable groups such as the *Dalit* community, children belonging to Indigenous or ethnic minority groups, refugee and asylum-seeking children, street children, children with disabilities and children living in rural areas. The Committee notes with grave concern that as a consequence of prevailing discriminatory attitudes, children belonging to vulnerable groups are particularly likely to fall victim to abuse and exploitation.

36. With reference, inter alia, to the concerns of the Committee on the Elimination of Racial Discrimination (CERD/C/64/CO/5) regarding the persistent de facto caste-based discrimination against *Dalit* in education, employment, marriage, access to public places including water sources and places of worship, the Committee expresses serious concern about the harmful effects of this prevailing form of discrimination on the physical, psychological and emotional well-being of the *Dalit* children in the State party.

61. The Committee also notes with concern that little has been done to address the particular health vulnerabilities and needs of children at risk, including street children, child labourers, child sex workers and *Dalit* children.

75....The Committee is also concerned about the high dropout rate, and that significant inequality exists in access to education, in part due to the hidden costs associated with schooling, and that a large proportion of girls and children from disadvantaged backgrounds such as *Dalit* children and children with disabilities remain deprived of educational opportunities.

92. While welcoming the abolition in 2000 of the *Kamaiya* system of bonded labour and the enactment in 2002 of the *Kamaiya* Prohibition Act, the Committee is concerned that a large number of *Kamaiya* children remain unreleased and continue to work as bonded labourers, and that many thousands of *Dalit* bonded labourers (*haliya*), including children, are reported to be working in agriculture in Western Nepal and in the plains. The Committee is particularly concerned that they continue to face serious difficulties in the areas of the right to housing, land, work and education.”

IV. Nepal State Report

In the State Report, Indigenous Peoples are not given sufficient attention. The government of Nepal reports on implementing a Three-Year National Action Plan on Human Rights (2010/11-2012/13) with the objectives “to strengthen the human rights situation of the citizens of Nepal,

particularly of the people living below the poverty line, orphans, Dalits, Madheshis, indigenous nationalities and disadvantaged communities,” however the plan is aimed at strengthening human rights, but not ensuring of the rights and concerns of Indigenous Peoples in the newly promulgated constitution, and pending of endorsement of action plan to implement ILO convention 169. There is also low representation and participation of Indigenous Peoples in constitution writing, and in wider participation of Indigenous stakeholders in the areas of education, health etc. is extremely low.

The government reports on commissions such as NHRC, National Dalit Commission, National Foundation for Development of Indigenous Nationalities (NFDIN) and National Women Commission (NWC) having been set up at the national level to promote the rights of all sections of the society, however the commissions have not yet been autonomous, they lack resources and budget allocation, and neither has the mandate to monitor the human rights violations committed against Indigenous Peoples.

The government also touts that, “The gross enrolment rate (GER) of Dalit and Indigenous nationalities/Janjati children in ECD [Early Childhood Development] and PPC [Pre-Primary Classes] has also increased between 2004 (39.4%) and 2009 (66.2%), indicating a high participation rate of Dalit and indigenous nationalities/Janjati communities in ECD/PPC.” The GER of Dalits and Indigenous children has increased, but are still below the national average of 87.3 percent. On the other hand, the GER of hill Brahmins has continued to increase well above the national average during this same time period. Despite gains in literacy over the past decade, the benefits have not been distributed evenly across different indigenous groups. Within this category, Newars report the highest literacy rate at 75 percent, and Terai Indigenous peoples other than Tharu report the lowest literacy rate at just 50 percent. The literacy rate of the Kumal, Sunuwar, Majhi and Chepang cluster is around 52 percent and the literacy rates of Tamang, Tharu, Sherpa, Bhujel, Limbu, Rai, Gurung and Magar hover around 56 to 68 percent.²³

The report speaks of the Constitution providing for “rights-based, free, and universal education up to the secondary level, including primary education in mother tongues. The cultural rights of children belonging to indigenous and minority groups have been protected through the provision of the right to preserve and promote their language, script, culture, cultural civilization and heritage in the Constitution,” however the State has not taken any responsibility to implement and has left it up to the community to run if they wish.

The report also states that “there are 22 languages at primary level that have been used as the medium of instruction in the classroom teaching and learning activities, respecting the cultural right of indigenous nationalities and ethnic minority groups, as a transitional language support.

²³ Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) and The International Work Group for Indigenous Affairs (IWGIA), “Study on the Socio-Economic Status of Indigenous Peoples in Nepal”, 2014

This has assisted the children who speak in their mother tongues,” however the implementation is lacking severely.

In point 291 in the report, the government refers to Indigenous peoples as “socially backward nationalists,” indicating a racist and discriminatory bias. “The Constitution in article 35, clauses (3) and (10) ensures the protection of the rights of the indigenous nationalities and ethnic minorities. It directs to pursue a policy of strengthening the unity of the nation by maintaining cultural diversity of the country through the promotion of healthy and harmonious social relations, on the basis of equality and coexistence, among people of various religions, cultures, castes, communities, sects, origins, languages and linguistic groups, and by assisting in the equal promotion of their languages, literatures, scripts, arts and cultures and instructs to pursue a policy to uplift the **economically and socially backward indigenous nationalities** such as Janajati, Madhesis, Dalits, as well as marginalized communities, and workers and farmers living below the poverty line by making provisions for reservations in education, health, housing, food security and employment for a certain period of time.

V. Legal Framework

Convention on the Rights of the Child Articles 6, 8, 9, 11, 13, 14, 16, 17, 19, 20, 24, 26, 27, 28, 30, 33, 34, 35, 36, 37.

UN Declaration on the Rights of Indigenous Peoples

Article 14 of UNDRIP states in part that “States shall, in conjunction with Indigenous peoples, take effective measures, in order for Indigenous individuals, particularly children...to have access, when possible, to an education in their own culture and provided in their own language.”

VI. CRC General Comments

General Comment No. 11 (2009) Indigenous children and their rights under the Convention.

Health

“49.States parties shall ensure that all children enjoy the highest attainable standard of health and have access to health-care service. Indigenous children frequently suffer poorer health than non-Indigenous children due to inter alia inferior or inaccessible health services. The Committee notes with concern, on the basis of its reviews of States parties’ reports, that this applies both to developing and developed countries.

51.States parties should take the necessary steps to ensure ease of access to health-care services for Indigenous children. Health services should to the extent possible be community based and planned and administered in cooperation with the peoples concerned. Special consideration should be given to ensure that health-care services are culturally sensitive and that information about these is available in Indigenous languages. Particular attention should be given to ensuring

access to health care for Indigenous peoples who reside in rural and remote areas or in areas of armed conflict or who are migrant workers, refugees or displaced. States parties should furthermore pay special attention to the needs of Indigenous children with disabilities and ensure that relevant programmes and policies are culturally sensitive.”

VII. Other UN Body Recommendations

*United Nations General Assembly Resolution 64/292*²⁴ : *The human right to water and sanitation:*

“1. Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights;

2. Calls upon States and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all;

3. Welcomes the decision by the Human Rights Council to request that the independent expert on human rights obligations related to access to safe drinking water and sanitation submit an annual report to the General Assembly,¹³ and encourages her to continue working on all aspects of her mandate and, in consultation with all relevant United Nations agencies, funds and programmes, to include in her report to the Assembly, at its sixty-sixth session, the principal challenges related to the realization of the human right to safe and clean drinking water and sanitation and their impact on the achievement of the Millennium Development Goals.”

*ICESCR General Comment 15 (2002) : The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*²⁵

“16. Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, Indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees...”

CEDAW

CEDAW has urged Nepal “to intensify its efforts to address trafficking in women and girls. It recommends that its anti-trafficking strategy should include measures of prevention, the prosecution and punishment of perpetrators and increased international, regional and bilateral cooperation.”

CERD

In 2004, during the the last Review by CERD, in its concluding recommendations, “the Committee recommend[ed] that the State party take stricter measures to combat discrimination

²⁴ <http://www.un.org/es/comun/docs/?symbol=A/RES/64/292&lang=E>

²⁵ [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf)

against indigenous peoples, in line with its general recommendation XXIII on the right of indigenous peoples.”

Universal Periodic Review

The following were accepted recommendations during the first UPR review that have yet to be fully implemented:

“Review its legal framework to provide for a better protection and promotion of women's rights.”- Slovakia

“Continue promoting the work of the National Commissions for Women and for Dalit, through the reinforcement of resources that allows them to work in an efficient manner.”- Bolivia

“Strengthen the resources allocated to the implementation of the adopted National Action Plan for children for the period 2005-2015.” -Algeria and Slovakia

“Implement effectively the Human Rights Action Plan and other national action plans, including on the elimination of discrimination against women and on the rights of persons with disabilities.” -China

“Further enhance measures aimed at protecting the human rights of children, women and other vulnerable groups.” Philippines

“Eliminate all forms of discrimination and pass the bill on caste-based discrimination and untouchability.”- Denmark

“Further strengthen law enforcement and the judicial system in the efforts to address impunity, prevent domestic violence, and to protect women and children from trafficking as well as physical and sexual exploitation.” Malaysia

“Strengthen its measures to eradicate child abuse, sexual exploitation of children.” Azerbaijan

“Ensure that all girls, Dalit children and children belonging to ethnic minorities have equal access to quality education.” Finland

“Provide the National Dalit Commission and the National Women's Commission with sufficient resources to effectively realize their mandate.”- Slovakia

“Do all that is necessary to accelerate the drawing up of the various legal texts to reaffirm and reinforce the equality between all ethnic, cultural and linguistic components of Nepali society.” -Algeria

“Take further steps to eliminate discrimination against vulnerable or marginalized groups, including on the basis of gender or caste, by enacting laws to criminalize all forms of discrimination.” -United Kingdom

“Review and adopt relevant legislation and policies, including bills related to caste-based discrimination, the Women's Commission, the Dalit Commission, the rights of indigenous peoples and the rights of the child, to ensure full compliance with international human rights standards.” -Norway

*“Ensure that education is free and compulsory, with special focus on the enrolment of girls in schools.”-
Turkey*

VIII. Questions

1. What concrete steps is the government of Nepal taking to decrease the gap between Indigenous and non-Indigenous children?
2. What actions is the government of Nepal taking to protect Indigenous children?

IX. Recommendations

Cultural Survival urges the government of Nepal to:

1. Disaggregate data to establish funding priorities for Indigenous children, full and effective participation of Indigenous peoples should be ensured in census processes and national census data should be disaggregated by Indigenous ethnicity or nationality, and gender, taking into account the criterion of self-identification.
2. Prioritize disaster relief to Indigenous and other rural marginalized people who have been hardest impacted by the 2015 earthquake but have not received adequate services.
3. Ensure that policies to address early child marriage are developed with full participation and consultation with Indigenous Peoples.
4. Develop a concrete implementation strategy and budget allocation for combatting child labour practices, in consultation with Indigenous Peoples.
5. Develop measures to combat the sexual exploitation and trafficking of girls to specifically address the causal factors that disproportionately impact on Indigenous girls.
6. Food security for Indigenous peoples should be improved, particularly for those impacted by national parks and development projects.
7. All Indigenous children should have equal access to quality education as provided under Article 14 of UNDRIP.
8. Existing plans for bilingual education should be enforced as a matter of priority in order to promote the revitalization and development of Adivasi Janajati languages, including by allocating the required human and financial resources to allow for effective implementation of such programmes.
9. Renewed efforts to promote the rights of Indigenous women should be urgently put in place, including measures to eliminate all forms of discrimination and violence against them, with the active involvement of Indigenous women and their organizations. Such measures should be specifically targeted to the most at risk populations addressing root causes such as poverty, economic marginalization, land loss and economic migration.
10. A plan of urgency should be developed in order to confront the social and economic conditions of Adivasi Janajati communities listed as endangered or highly marginalized Indigenous groups, including the former bonded labourers such as the Kamaiyas and Kamalaris.

11. In partnership with Indigenous Peoples, train teachers and administrators within the education system on culturally appropriate curriculum and diversity training.
12. Implement policies to train teachers and administrators within the education system to abandon the use of corporal punishment.
13. Implement the World Conference on Indigenous Peoples Outcome Document, beginning with drafting a National Plan of Action to achieve the ends of UNDRIP.
14. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to make an official visit to Nepal