

THE INTERNATIONAL MOVEMENT AGAINST ALL FORMS OF DISCRIMINATION AND RACISM

IMADR Oral Statement: 27th session of the Human Rights Council

Items 3 & 5: Clustered ID with SR on indigenous peoples & Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)

17 September 2014

Thank you Mr. President,

This is a joint statement by IMADR and National Coalition Against Racial Discrimination (NCARD) in Nepal.ⁱ We highly commend the works of the Special Rapporteur and the Expert Mechanism towards strengthening indigenous peoples' access to justice over the years. In particular, we would like to recall and endorse the recommendations made in Special Rapporteur's 2004 report on indigenous peoples and administration of justice and the Expert Mechanisms' advice in its 2013 study on access to justice.

In Nepal, indigenous peoples continue to be overrepresented in incarceration in criminal justice systems. A report by a local NGO indicated that out of more than 3,500 detainees they visited during 2013, the largest number – a quarter of the detainees – was from indigenous groups.ⁱⁱ A 2012 report from the same NGO showed that indigenous detainees were disproportionately subjected to torture in detention than those from dominant groups.ⁱⁱⁱ

Criminalization of indigenous cultural practices under Nepal's national laws has continued legal persecution of indigenous peoples. Prohibition of cow-slaughtering - an offence based on Hindu belief of cow as holy animal and punishable by 12 years in prison – is a major case in point. As reported by an indigenous lawyers' group in Nepal, around 30 persons, most of them indigenous, faced criminal charges for cow-slaughtering in a period of a year between 2012 and 2013 alone.^{iv} The group has reported of scores of indigenous persons facing imprisonment for cow-slaughter over the years.

Despite historic exclusion and assimilation processes, some indigenous communities in Nepal have still maintained and continue to practice their traditional judicial systems.^v However, within Nepal's unitary system of law, there is no formal recognition of the traditional legal and political systems practised by those communities.^{vi}

On the other hand, indigenous peoples in Nepal have very low participation in State judiciary and judicial service at all levels. A governmental study^{vii} in 2013 indicates that indigenous peoples, who account for more than one-third of total population, make up for only about 10% of total judges, gazetted officers and non-gazetted staff of Nepal's judicial sector. Only around 18% of total lawyers in Nepal are from indigenous communities. Further, use of Nepali language as sole

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official language in national courts has also had discriminatory effect on indigenous peoples, who have their own native languages.^{viii}

As per Interim Constitution 2007, Nepal is a secular, inclusive state with indigenous peoples and other discriminated groups provided the right to participate in State structures on the basis of principles of proportional inclusion. Nepal voted in favor of UNDRIP in 2007 and is the only Asian country which has ratified the ILO Convention 169 in the same year.

Thus, we urge the Government of Nepal to immediately take necessary legislative and administrative steps, in consultation with indigenous peoples, to enhance their access to justice, in terms of decreasing their high incarceration rate, recognizing their traditional judicial systems, increasing their participation in State judiciary and delivery of effective justice.

Thank you Mr President.

ⁱ With contribution from Indigenous Peoples' Rights Activists Network (IRPAN)

ⁱⁱ That is despite their categorization omits one of the populous officially recognized indigenous group of Nepal. Advocacy Forum, Promising Developments, Persistent Problems: Trends and Patterns in Torture in Nepal during 2013, June 2014, Pg 9
<http://advocacyforum.org/downloads/pdf/publications/torture/promising-development-persistent-problems.pdf>

ⁱⁱⁱ Advocacy Forum, Nepal: Is the Government Unable or Unwilling to Prevent and Investigate Torture?, 2014, Pg 32
<http://advocacyforum.org/downloads/pdf/publications/torture/26-June-2013-english-version.pdf>

^{iv} Cases of persecution of indigenous peoples in Nepal under law against cow-slaughter reported in 2012/13, 16 Dec 2013,
<http://indigenoussuesinasia.wordpress.com/2013/12/16/527/>

^v In western Nepal's Mustang district, only two cases were registered in the district court in 2013, which shows significant continued support of indigenous Thakali peoples to their traditional Mukhiya system.

^{vi} A/HRC/12/34/Add.3

^{vii} National Judicial Academy, Gender Equality and Social Inclusion Analysis of the Nepali Judiciary (Research Report), May 2013,
http://njanepal.org.np/index.php?option=com_rokdownloads&view=file&Itemid=158&id=76:gender-equality-and-social-inclusion-analysis-of-the-nepali-judiciary

^{viii} For example, in a case from 2009 in Sindhuli district court in central Nepal, an indigenous Tamang person could only be acquitted of murder charges after the court allowed him to testify in his native language following intense pressure by local indigenous organizations. Chhar Nhaan [Tamang language monthly], *Tamang Gyoiri Bayan*, Cover Story Year 7, Issue 2, Sawan 2066 BS (Jul-Aug 2009)