



Tharu woman, Western Terai., Photo: Colin Nicholas

Nepal is a land-locked country of 147,181 km<sup>2</sup>, bordered by China in the North and by India in the South, East and West. Nepal is a pluralistic country with many castes and ethnic groups, cultures, languages and religions. The total population of Nepal is 22.7 million, and over one hundred castes/ethnic and religious groups, and ninety-two mother tongues were listed in the Census 2001. Indigenous peoples, often referred as “indigenous nationalities” (*Adivasi Janajati*) comprised 8.4 million, or 38 % of the total population. However, indigenous peoples’ organizations claim they have been under-represented in the census, and their actual populations comprise more than 50%. Indigenous peoples are highly marginalized, and have been excluded from the nation building process, which has been largely in the hands of the non-indigenous *Bahun* and *Chettri* castes, who still hold dominant positions in political, economical and social life of the country. Indigenous peoples are among the poorest of the poor, and their marginalization has been the reason for the broad support which the Maoist Party enjoyed during the 12 years long armed conflict. The inclusion of hitherto excluded groups like indigenous peoples in the process of restructuring the state was an important agenda of Twelve-point Agreements between the government and Maoists, which has been consistently reflected in subsequent agreements as well as in the Interim Constitution of 2007.

### **Terms used for indigenous peoples**

Indigenous peoples are recognized constitutionally<sup>1</sup> as well as legally. They are officially called “*Adivasi Janajati*” (indigenous nationalities). The National Foundation for Development of Indigenous Nationalities Act 2002 defines *Adi-*

*vasi* Janajati as a group or community with own mother tongue and traditional customary practices, distinct cultural identity, social structure and oral or written history.<sup>2</sup> 59 indigenous nationalities have been legally enlisted in the NFDIN Act 2002. The definition more or less incorporates cultural identity rather than political entity of indigenous peoples, ignoring the recommendation made by the working group that was commissioned to make recommendations to the government for the establishment of NFDIN.

### **The Government's position regarding the recognition of indigenous peoples and their rights**

Indigenous peoples have the right of Social justice thus they have a right of proportional representation in the State Structure.<sup>3</sup>

Until 1990 indigenous peoples' separate identities and concerns had been completely denied by government. The government's policy was to assimilate indigenous peoples into the dominant Hindu hierarchical caste system. This position changed in the wake of the political change of 1990, which was reflected in the government's new plans and policies (e.g. Ninth Five-Year Plan and subsequently reflected into the Tenth-Five Year Plan as well as in the Three Year Interim Plan). The government was compelled to address indigenous peoples' issues due to overwhelming pressure from indigenous peoples, scholars and academic institutions who pointed at the vast discrepancies between the dominant groups (*Banahun and Chettri* castes) and indigenous peoples. As a result, for the first time in history, the Constitution recognized the diverse nature of the state<sup>4</sup> and provided rights to language, culture and religion<sup>5</sup>. However the demand for secularism expressed by various excluded groups including indigenous peoples was denied, and Nepal continued to be a Hindu Country<sup>6</sup>. Importantly, the Constitutional provision for equal protection gave avenue to have special measure for the protection and educational, economic and social development of marginalized groups, which was considered to be applicable to indigenous peoples. However, these provisions were never really implemented, and were even made ineffective by the Supreme Court in the name of judicial interpretation for example with respect to some educational institutions.

In 2002 the NFDIN Act, 2002 was promulgated to establish a semi-governmental focal institution with mandate of working in the area of social, educational and cultural development of indigenous peoples. The purpose of the Act was also to legally define and identify indigenous peoples. The Act refers to indigenous peoples as *Adivasi Janajati*. The Act however neither stipulates the rights of indigenous peoples nor has the NEFDIN been given a sole and clear mandate to work in the development sector. With this rather blurry mandate, the Foundation has been facing problem of addressing all issues and concerns including human rights and fundamental freedoms of *Adivasi Janajati*. Similarly, as a semi-governmental institution the Foundation is bound by and dependant on the government.

Recently, the government's position on the recognition of indigenous peoples and their rights has moved in a positive direction due to relentless pressured by the organized indigenous peoples' movement. A Twenty Point Agreement was made between indigenous peoples and the government in 2007 which emphasized the inclusion of indigenous peoples in the process of restructuring the state. The agreement was however severely criticized by some indigenous groups as failing to address some of their main concerns and demands, e.g. autonomy and federalism in connection with the right to self-determination. Indigenous peoples have also been denied direct representation in the Constituent Assembly, which represents a huge challenge for them to address their aspirations and concerns in the Constitution making process.

At present, Nepal is in the process of writing a new Constitution after holding the Constituent Assembly election to institutionalize the restructure of the State introducing a federal republic system<sup>7</sup> replacing the Unitary System. As part of this process, an Interim Constitution was promulgated in 2007. The Interim Constitution recognizes indigenous peoples and their rights to some extent. It guarantees the right to social justice, including the right to participate in the state structure on the basis of the principle of social inclusion<sup>8</sup>. Poverty among indigenous peoples is supposed to be addressed by special measures including reservations in education and employment for a certain time period.<sup>9</sup> However, these provisions have only a moral force and their implementation depends on the political will of the political parties in power. Even though Article 63.4.3(a) provides for proportional representation of indigenous peoples' in the Constituent Assembly it is up to political parties to select indigenous representatives.

The *National Foundation for Development of Indigenous Nationalities (NFDIN) Act 2002* is the only national law that specifically deals with indigenous development issues. It has a unique structural framework where 92 out of the 125 members of the governing council are selected upon recommendation of indigenous peoples' organizations and the others are nominated by the co-chairperson. Both the recommended and nominated members are indigenous. The Prime Minister is the chairperson of the Council. The vice-chairperson is the main executive post and only indigenous is eligible. Indigenous peoples' organizations are demanding to convert the foundation into a commission with the provision of overseeing the implementation of laws on indigenous peoples' rights.

The *Self-Governance Act 1998* triggered the passing of the NFDIN Act. For the first time a law recognized that indigenous peoples are excluded and need to be brought into the national mainstream (Preamble). There are provisions for indigenous peoples' representation in Village, Municipal and District Development Councils. However, these bodies had been non-functional which lead to the demand by indigenous organizations for a specific law, resulting in the passing of the NFDIN Act.

Section 2 of the Scholarship Act 2006 has been amended to ensure scholarships for indigenous and other excluded groups. There is however still a lack of regulations to translate this provision into practice.

The law with the severest negative consequence for indigenous communities is the Land Reform Act 1964 and Land Maintenance Act of 1963. They abolished traditional communal land rights and as a consequence displaced indigenous communities from their lands as they were taken over by members of the dominant Hindus of the *Bahun and Chetri* casts.

Nepal is a signatory to the number of international instruments and conventions including the International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966, International Convention on the Elimination of All Form of Racial Discrimination 1969, UN Convention on the Rights of Child 1989, the Convention on Biological Diversity 1992.

In 2007, the Nepal parliament ratified ILO Convention No. 169 “concerning Indigenous and Tribal Peoples in Independent Countries”, and Nepal voted in favour of the passing of the United Nations Declaration on the Rights of Indigenous Peoples in the UN General Assembly on 13 September 2007.

## Identifying indigenous peoples in Nepal

Nepal is an ethnically highly diverse country with over spoken 120 languages<sup>10</sup> of four main linguistic families – Dravidian, Indo-European, Sino-Tibetan and Austro-Asiatic. Most of the Indo-Arian speakers have migrated to the present territory of Nepal since the 12<sup>th</sup> and 13<sup>th</sup> century, while the Sino-Tibetan speakers have lived there much longer. The Dravidian and Austro-Asiatic speakers are very few and also more recent migrants.

After the annexation of the native principalities by King Prithvi Narayan Shah in the second half of the 18th century, the native groups were forced into the Hindu cast system and their traditional cultures, social practices and institutions were discriminated against and forbidden. It is within the context of suppression and marginalization by the dominant Hindu groups that the indigenous peoples of Nepal are identified. Most of the indigenous ethnic groups are speakers of languages belonging to the Sino-Tibetan linguistic family, but there are a few groups – such as the Tharu in the plains region (called Terai) – who speak languages belonging to the Indo-European linguistic family.

59 indigenous nationalities have been legally enlisted in the National Foundation for Development of Indigenous Nationalities Act 2002 and are thus officially recognized in Nepal. These are categorized according to four major geographical regions:

*Mountain Region (Himalaya):* 17 groups: Barah Gaunle, Bhote, Byansi, Chhairontan, Dolpo, Larke, Lhomi (Shingsawa), Lhopa, Marphali Thakali, Mugali, Siyar, Sherpa, Tangbe, Thakali, Thudam, Topkegola and Walung.

*Hills:* 24 groups: Baramu, Bhujel, Chepang, Chhantyal, Dura, Fri, Gurung, Hayu, Hyolmo, Jirel, Kusunda, Lepcha, Limbu, Magar, Newar, Pahari, Rai, Sunuwar, Surel, Tamang, Thami, Kumal, Yakkha and Tin Gaunle Thakali.

*Inner Terai:* 7 groups: Bankaria, Bote, Danuwar, Darai, Majhi, Raji and Raute.

*Tarai:* 11 groups: Dhanuk (Rajbanshi), Dhimal, Gangai, Jhangad, Kisan, Kushbadia, Meche, Rajbanshi (Koch), Satar (Santhal), Tajpuria and Tharu.

There are however several ethnic groups, like the Ghale, Kulung, Bahing, Karani etc., that have been left out and are demanding to be included. The National Foundation for Development of Indigenous Nationalities (NFDIN) has initiated the enlistment of more groups within the Act

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## Sources

### *Printed sources*

- Bhattachan, Krishna B. 2003. Expected Model & Process of Inclusive Democracy in Nepal. Paper presented in a International Seminar on the Agenda of Transformation: Inclusion in Nepali Democracy organized by the Social Science Baha in Kathmandu.
- International Work Group for Indigenous Affaris 2007. *The Indigenous World*. Copenhagen: IWGIA
- IIDS, 2000. *The Fourth Parliamentary Election: A Study of the Evolving Democratization Process in Nepal*. Kathmandu : IIDS
- Interim Constitution of Nepal 2007. Nepal Kanoon Kitab Byawastha Smeetee, Kathmandu, Nepal
- ILO and NEFIN 2005. *ILO Convention No.169 and Peace Building in Nepal*, Joint Publication. Kathmandu
- LAHURNIP 2005. Comparative Analysis of National Laws and ILO Convention on Indigenous and Tribal Peoples, 1989(No.169)
- Nepal Act Collection Supplementary Part 2063(C)
- Pairabi, Prakashan 2005. *Nepal Ain Sangrah Bhag 1. Pairabi Publication: Kathmandu Nepal*

### *Internet sources*

- National Foundation for Development of Indigenous Nationalities (NEFDIN) web-site: <http://www.nfdin.gov.np>
- Nepal Federation of Indigenous Nationalities (NEFIN) web-site: <http://www.nefin.org.np>

## Notes

<sup>1</sup> Article 3 of the Interim Constitution 2007

<sup>2</sup> Sec. 2 a of the NFDIN Act 2001

<sup>3</sup> Article 21 of the Interim Constitution 2007

<sup>4</sup> The Constitution of Kingdom of Nepal 1991. Art 2

<sup>5</sup> *Ibid Art. 18,19 and 26(2)*

<sup>6</sup> *Ibid Art. 4*

<sup>7</sup> Article 159 of the Interim Constitution

<sup>8</sup> Interim Constitution 2007, Art. 25

<sup>9</sup> *Ibid Art. 35*

<sup>10</sup> Summer Institute of Linguistics. Ethnologue. Languages of the World <http://www.ethnologue.com/>