**Written Submission**

**GENERAL RECOMMENDATION ON THE RIGHTS OF INDIGENOUS WOMEN**

*79th session on the Committee on the Elimination of Discrimination against Women*

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**Context/Background:** Indigenous Peoples (IPs) in Nepal comprise of 36 percentage of the total population[[1]](#footnote-1) and more than half of the populations are Indigenous Women (IW). And, it is estimated to have 700000[[2]](#footnote-2) Indigenous Women with Disabilities (IWWDs) in Nepal. Despite the significant portion, IW and IWWDs have been historically marginalized in terms of their social, political, culture, language, and economic opportunities, and their distinct tradition, culture, and religion have not been recognized. IW and IWwDs continue to suffer from multiple and intersectional discriminations due to continuing colonization and systematic discriminations depriving us from enjoying our collective rights leading to our cultural genocide. State has been violating, interfering, denying, abusing, noncomplying or ignoring our human rights. Ongoing everyday serious violations of our human rights manifested in the forms of land grabbing, forced eviction, killings, torture, rape, sexual harassment, criminalization of customary practices, and victimization from climate change must stop.

Nepal is a party to Committee on the Elimination of Discrimination against Women (CEDAW), ILO Convention no. 169 and the United National Declaration on the Rights of Indigenous Peoples (UNDRIP), UN Convention on the Rights of Persons with Disability (CRPD) which provide a clear human rights framework for the inclusion of IPs and Person with disabilities with respect for both individual and collective rights. Yet, Indigenous women and IWwDs are invisible in constitution, laws, plans, policies, and programs, and are victims of historical injustice and structural violence; in contrast, “mainstream” women, who belong to the ruling*[[3]](#footnote-3)* and are not able to fully exercise and enjoy their rights as stipulated in those international instruments.

The Concluding Observations made by the Committee on the Elimination of Discrimination against Women (CEDAW) in CEDAW/C/NPL/CO/6 that included, among others, a recommendation at paragraph 41(a) to the State party Nepal to "Amend the Constitution to explicitly recognize the rights of indigenous women, in particular their right to self-determination, in line with the United Nations Declaration on the Rights of Indigenous Peoples." We strongly believe this recommendation to Nepal need to be made a General Recommendation as it is equally important to all Indigenous Women and girls of the world.

In this context, this Written Submission is prepared as collaborative effort of four Indigenous Women’s Consortium Members[[4]](#footnote-4) to submit during the 71st session of the Committee on the Elimination of Discrimination against Women (CEDAW) where a virtual day of general discussion on the rights of and girls is scheduled by the Office of the High Commissioner for Human Rights. Indigenous Women’s Consortium Nepal appreciates the initiative of CEDAW Committee for creating special space and opportunity to provide inputs for the elaboration by the Committee of a General Recommendation on the rights IW and Girls.

This report highlights the following key issues and present the key recommendations to the UN Committee to include in the General Recommendations to the State partiies

***Indigenous Women and Rights to Land Territories and Resources:***

IW are the custodian of nature and biodiversity play an important role in the protection, preservation, and promotion of sustainable livelihood and natural resources, conservation of sacred places and transferring their Indigenous Knowledge and skills. UNDRIP (Article 26) recognizes that IPs have the right to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired and such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous Peoples concerned. Likewise, CEDAW’s article 14 ensures the right of women in rural areas to have access to equal treatment in land and agrarian reform and in land resettlement schemes along with access to “agricultural credit and loans, marketing facilities, [and] appropriate technology.[[5]](#footnote-5) Despite the recognition and protection at the international level, these rights are often not respected – and are even violated – at the national level, either by States or the private sector (IWGIA, 2017b). Because of lack of recognition of their rights to land, they face land alienation and restrictions to their access to natural resources or territories that they have traditionally occupied and are not considered when environmental conservation policies are made.[[6]](#footnote-6)

All most all development aggressions in Nepal have been happening in the areas of Indigenous Peoples. Chitwan National Park and Udayapur Cement Factory, implementation of Melamchi Drinking Water Development Project and Arun III Hydro-electric Project are such projects running in the areas of IPs that have largely denied and violated the rights of IPs.[[7]](#footnote-7) In addition to that the government carried out the road expansion projects in the Indigenous Newar territories in different parts of Kathmandu valley without the consent. This shows that state is still following the top-down development approach ignoring IPs’ rights to FPIC.

The loss of the land and territory because of situations such as the execution of mega development projects seriously harm Indigenous Women and place them in a situation of great vulnerability, being forced to leave their land, and to migrate to cities, often in situations of extreme poverty and vulnerability, leaving them with multiple discriminations to contend with. Further, loss of land and territories leads to loss of their Indigenous language, culture, tradition, costume asthey might be forced to integrate into other cultures and more individualistic economic systems that threaten their identity.In such circumstances, Indigenous women are forced to seek other means to survive, remaining exposed to insecure and harmful working conditions, labor, or sexual exploitation or, worse, human trafficking[[8]](#footnote-8). Likewise, their disadvantages on the right to own property is evident, given the obstacles they face in land titling, and thus access to credit and/or other economic resources[[9]](#footnote-9).

***Participation and Representation of Indigenous Women in Private and Public Sphere:***

A recent field study[[10]](#footnote-10) has revealed poor situation of participation and representation of IW at all levels which is a serious concern. Given that all international laws are interrelated and should be used in good faith, CEDAW provisions relating to participation and representation in political and public life should be interpreted in line with the UNDRIP, ILO Convention no. 169 and Outcome Document of the World Conference on Indigenous Peoples (WCIP), 2014.

Discrimination against women mentioned in the Preamble (para 7) is just a part of the whole discrimination as an obstacle for the whole participation. It means, IW faces serious problems in participation and representation outside their community within the State and beyond. IW face multiple discriminations, including gender and racial discrimination, in political and public life. The obstacles for participation of IW to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies as stated in CEDAW Article 7 is not limited only to patriarchy and gender discrimination, but also to racial, linguistic, and cultural discriminations. Also, the Hill Bahun-Chhetri (Khas Arya) hegemony, Brahmanism, and genderism, and more importantly lack of formal recognition of customary self-government systems and customary practices of self-selection process of our representatives are formidable obstacles.

With regards to participation of IPs, including IW, UNDRIP Article 41 clearly provide instruct the UN Agencies, including CEDAW to ensure ways and means of participation of IPs on application of non-discrimination and gender equality. And the participation and representation of IW and IWwDs should include collective rights, and self-determination and not confined to individual rights.

***Indigenous Women’s Access to Justice*:**

IW face serious violation of their individual and collective rights as IW and IPs and lack access to both State and Indigenous Customary justice System. According to a report[[11]](#footnote-11) published by National Judiciary Academy, Nepal, there were 77.6 percent Brahmin/Chettri, 98.3 percent Hindus and 86.1 percent male members in the judiciary sector. This clearly indicates that there is negligible or almost no representation of IPs, IW, and has high influence of Hindu Jurisprudence in most of the laws and the Judiciary system if Nepal creating further challenges for IW and IWwDs to access justice.

The Indigenous communities have their own traditional institutions effective to deliver justice based on their culture, tradition, and belief that are acceptable i.e., Bheja, Badghar, Guthi, Ghampa, Majhesava, etc.[[12]](#footnote-12) which are passed on to the younger generations. But Nepal government has not given de jure power to these Indigenous institutions and have been practicing in de facto. Since the State has not recognized the traditional customary justice system, Indigenous women are not able to make self-determined decision in terms of exercising their rights to access justice.

The traditional practice of collecting natural resources in ancestral lands has been criminalized by forest and nature conservation laws, including laws seeking to protect national parks, wildlife reserves, wetlands hunting grounds, community forests, collaborative forests, and national forest. The Fact-Finding Mission[[13]](#footnote-13) reported the cases of killings, death after alleged torture in Chitwan National Park (CNP), mistreatment, sexual abuse, arbitrary detention, harassment towards local Indigenous Peoples and particularly IW. According to the BuzzFeed News, Indigenous groups living near Chitwan have [long detailed](https://www.documentcloud.org/documents/5754776-Conservation-Human-Right-Policy-Matters-2007.html) a host of abuses by these forces and villagers have reported beatings, torture, sexual assaults, and killings by the park's guards.**[[14]](#footnote-14)**

Even though the Constitution has declared Nepal as a secular country, IPs are being criminalized for practicing their culture and tradition. According to the report published by Record Nepal,[[15]](#footnote-15) between 2011 and 2017, there were a total of 727 cases of cow-slaughter in the district, appellate and supreme courts, where 17 people have received 12-year prison sentences. The report further states that in 2019, among the 34 accused, 51 percent have been Dalit, 16 percent Tamang, 16 percent Magar, seven percent belonged to Rai Indigenous groups. Hence, its essential that States recognizes the existence of special jurisdictions applicable to IPs and IW assessing the degree of protection of the fundamental rights of IW enshrined in the international instruments like UNDRIP and ILO 169.

***Indigenous Women’s Rights to education, employment, and livelihood:***

IW are less likely to ensure their social, economic, health and traditional livelihood skills, live in extreme poverty due to historical circumstances related to dominant group policies. Despite many initiatives, the question on access and quality of education to indigenous children, girls, children with disabilities and other marginalized groups have remained crucial and 10 percent of marginalized children are still out of school. Children with disabilities are chained and are in vulnerable and in isolated situation within homes due to lack of support services, ignorance, and access to information for them.[[16]](#footnote-16)

Only 24 multilingual schools are running with lack of resources budget and policies whereas Nepali language is accepted as official medium of instruction in education and huge resources are optimized, which create obstacles for IPs in accessing education. There is no disaggregated data of 30% women who has received vocational training.[[17]](#footnote-17) Other report indicates that 90% have low level of education, 66% girls have completed primary education followed by 48 % secondary and 25% enrolled in tertiary education and only 9% are engaged in vocational educational programs.[[18]](#footnote-18) Hence, IPs oral tradition of learning, protection and promotion of language, education are being lost.

Poverty, lack of employment, loosing Indigenous and traditional skills and customary practices, and lack of necessary skills for employment in rural settings are fueling unsafe internal and external migration and trafficking of IW and Girls. Women going through irregular or illegal channels of migration are mostly from indigenous groups.[[19]](#footnote-19) Study shows that 90% IPs and IW are landless, 80 % of them have limited access to land and resources, 90 % of them have low monetary income[[20]](#footnote-20).

80 % IWwDs have no land and 1.1% rely on forest products which means, they have no access to forest. Similarly, 75% women and 69% men with disabilities use coping strategies like reducing meals or compromising on culturally food mixing grains or adding more water are practiced or live with empty stomach and only 64% peoples with disabilities have disability card by which they receive state services[[21]](#footnote-21). Most state provided services have no impacts on PWDs and IPWDs due to duplication of programs, lack of coordination and human resources to understand the challenges faced by IPWDs. So, the implementation status of plan and policies has been slow.[[22]](#footnote-22)

***Impact of Covid-19 and Indigenous Women:***

The COVID-19 pandemic has made systemic gaps, underlying structural inequalities, pervasive discrimination, and crises more visible with inadequate health and social protection system[[23]](#footnote-23) and are unfolding against the backdrop of several important milestones for equality and the human rights of IPs, IW and IPWDs in all their diversity. The rate of COVID-19 infection is significantly higher among Indigenous communities compared to non-indigenous communities[[24]](#footnote-24). Lack of access to information in their own mother languages with cultural sensitivity amplify their risk to be aware, take precautionary and preventive measures.

A recent study[[25]](#footnote-25) conducted by NIWForum reports that there is increased economic hardship and disruption in the lives of IW as the income of every household shrank sharply and the poorer sections of them suffered the most due to lock down. This pushes IPs and their communities further into poverty and marginalization. The pandemic has revealed how the global food systems can become vulnerable and lead to increase in food insecurity, malnutrition, and poverty especially among marginalized groups[[26]](#footnote-26). Similarly, the impact of Covid on IPwDs is adverse and acute from right to live, livelihood, physical and mental health, and violence perspectives and has increased health risks among the IW and IWwDs.

Violence against IW, IWwDs is rampant and face high risk. Ten years girl with disabilities from marginalized groups during the lockdown in Rautahat district has been raped by 54 old man and the case has only been registered[[27]](#footnote-27) but no such effective actions have been taken. Similarly, eight years old girl from indigenous communities has been rapped and the incident was recorded as falling from the tree.[[28]](#footnote-28) So during the pandemic situation most human rights violation cases are not seriously addressed.

The study[[29]](#footnote-29) conducted by NIDWAN indicates that 80.51% are affected by Covid and 55.44% did not receive any relief from local government due to lack of information and accessibility. In addition, during Covid crisis, 27.07% felt fear during the Covid-19 pandemic, followed by 20.58% felt stress, 17.98.% felt restlessness, and 12.42% could not sleep properly and in this context, only 19.49% at central level have only received psychosocial counselling till now.

The government has not taken any specific initiatives for IPs health, including IPs rights to FPIC and neither any gender, disability nor culturally appropriate measures are adopted. Quarantine beds and spaces build for COVID measures do not have provision of safety measures, enough beds and proper treatment.[[30]](#footnote-30)All the marginalized groups including many IPs are losing their lives without regular treatment[[31]](#footnote-31). Our vulnerability has been further increased by the State as they are taking undue advantages from COVID-19 pandemic. Hence, COVID-19 presents a new and multi-dimensional challenges/threat to the survival of IW and IWwDs in developing countries like Nepal.

In this context, we urge the UN CEDAW Committee to include the following on the General Recommendations on Indigenous Women and Girls to the State parties:

* recognize all the rights, both non-discrimination & equality, and self-determination, of Indigenous Women and Girls fully in line with the UNDRIP;
* recognize collective rights of Indigenous Women and Girls;
* recognize rights to Indigenous Peoples' self-determination, autonomy and customary self-government systems with no gender discrimination against Indigenous Women;
* recognize collective ownership and control over ancestral lands, territories and resources;
* protect and promote Indigenous Feminism where kinship, lands and culture based egalitarian family and community define gender relations.
* recognize Indigenous guardianship, especially significant roles of Indigenous Women, on biodiversity and climate change;
* ensure mandatory national framework on Free, Prior and Informed Consent (FPIC) in line with UNDRIP;
* establish enabling institutional, legal and policy frameworks to ensure effective and meaningful participation and representation, including direct representation through our own customary selection practices, of Indigenous Women at all levels of decision making in political and public life;
* respect and recognize the Indigenous Customary Judiciary Systems;
* develop mechanisms to provide services in Indigenous languages to make the justice system easily accessible in their Indigenous and disability friendly languages;
* stop people outside the Indigenous Peoples' community to acquire intellectual property rights on traditional knowledge systems;
* ensure Special Rapporteur on stopping violence against Indigenous Women and Girls;
* integrate disaggregated data system by collective identity, race, age, gender identity, disability, language, religion, culture and region in all services and measures; and
* ensure Indigenous Women and Girls budgeting and auditing.

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2. NIDWAN Guiding Document 2018 available in www.nidwan.org.np [↑](#footnote-ref-2)
3. <http://www.hdr.undp.org/sites/default/files/nepal_nhdr_2014-final.pdf> [↑](#footnote-ref-3)
4. National Indigenous Women’s Federation (NIWF), National Indigenous Disabled Women Association Nepal (NIDWAN), National Indigenous Women’s Forum (NIWF), and Indigenous Women Legal Awareness Group (INWOLAG) in Nepal [↑](#footnote-ref-4)
5. Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) art. 14, adopted Dec. 18, 1979, 1249 U.N.T.S. 13. [↑](#footnote-ref-5)
6. *Indigenous Peoples and Climate Change*, ILO, 10 (2017) <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf>. [↑](#footnote-ref-6)
7. Baseline Study Report, **Protecting Indigenous Peoples Rights Defenders and Promoting Land Rights in Selected Communities Affected by Land Conflicts in Nepal With regard to** **Chitwan National Park**, **Melamchi Drinking Water Development Project**, **Udayapur Cement Factory**, **Arun III Hydroelectric Project, Kosi High Dam Multipurpose Project** **National Indigenous Women’s Federaton (NIWF)** [↑](#footnote-ref-7)
8. Ibid.; ILO, Indigenous women workers with case studies from Bangladesh, Nepal and the Americas, Diana Vinding and Ellen-Rose Kambel, 2012 [↑](#footnote-ref-8)
9. UN, United Nations Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the United Nations Permanent Forum on Indigenous Issues. Gender and Indigenous people, Briefing Note No. 2, (n.d.). [↑](#footnote-ref-9)
10. UNHEARD AND UNSEEN: Indigenous Women’s Path to Empowerment and Sustainable Development— Bangladesh, India, and Nepal (Volume 1), 2021 [↑](#footnote-ref-10)
11. [Research report on women’s access to justice through the Nepali judicial system | UN Women – Asia-Pacific](https://asiapacific.unwomen.org/en/digital-library/publications/2016/09/research-report-on-womens-access-to-justice) [↑](#footnote-ref-11)
12. Details in Traditional institutions: A study, Lahurnip, 2015. [↑](#footnote-ref-12)
13. NATIONAL PARK, WILDLIFE RESERVE AND HUNTING RESERVE: Review of Laws and Policies Relating to Indigenous Women and Violations of Indigenous Women's Rights, National Indigenous Women Federation, Nepal, 2021 P. 24 [↑](#footnote-ref-13)
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    [↑](#footnote-ref-14)
15. www.recordnepal.com/criminalization-of-cow-slaughter-is-a-tool-of-caste-terror [↑](#footnote-ref-15)
16. European Union Report, 2017. The Situation of Indigenous Children with Disabilities, Directorate General For External Policies: Policy Department European Parliament [↑](#footnote-ref-16)
17. Ibid NIWF [↑](#footnote-ref-17)
18. The International Work Group for Indigenous Affairs (IWGIA) and the International Labour Organization (ILO), 2020. Indigenous women’s realities: Insights from the Indigenous Navigator, published ILO and IWGIA. [↑](#footnote-ref-18)
19. Sahavagi, Didi Bahini and Feminist Dalit Organizations with support from UN Women Nepal (2015) Progress of Women in Nepal (1995- 2015) Substantive Equality: Non-negotiable, available at: http://un.org.np/sites/default/files/Progress%20Of%20Women%20In%20Nepal%20- %20Low-res\_1.pdf [↑](#footnote-ref-19)
20. Ibid IWGIA [↑](#footnote-ref-20)
21. Ibid, WFP [↑](#footnote-ref-21)
22. Gurung, Pratima. 2016. Implementation Status of Disability Related Plan and Policies in Nepal, Compendium of Policies Review Report: A Summary. Government of Nepal, National Planning Commission. p 22 [↑](#footnote-ref-22)
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24. <https://www.un.org/development/desa/indigenouspeoples/covid-19.html> [↑](#footnote-ref-24)
25. Impact of the pandemic on Indigenous women, and their strategies of resilience: A study from Supari, National Indigenous Women Forum, 2021 [↑](#footnote-ref-25)
26. World Bank Food Security and COVID-19. 2020. <https://www.worldbank.org/en/topic/agriculture/brief/> verified 28 May 2020, WFP COVID-19 Will Double Number of People Facing Food Crises Unless Swift Action is Taken. 2020. <https://www.wfp.org/news/>, Nguyen K. 2020 State of Food Security and Nutrition in the World Report: Rising Hunger and COVID-19 Present Formidable Challenges. 2020. <https://www.ifpri.org/blog/2020-state-food-security-and-nutrition-world-report-rising-hunger-and-covid-19-present> (July 27, 2020) [↑](#footnote-ref-26)
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30. https://kathmandupost.com/sudurpaschim-province/2020/06/04/sudurpaschim-sees-steady-rise-in-coronavirus-cases-but-hospitals-d [↑](#footnote-ref-30)
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