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# 增进和保护所有人权、公民、政治、经济、社会和文化权利，包括发展权

## 尼泊尔国家人权委员会 * 提交的资料

### 秘书处的说明

人权理事会秘书处谨转交尼泊尔国家人权委员会提交的来文，** 按照理事会第 5/1 号决议附件载列的议事规则第 7(b)条转载如下。该条规定，国家人权机构的参与要根据人权委员会议定的安排和惯例，包括 2005 年 4 月 20 日第 2005/74 号决议进行。

* 具有增进和保护人权国家机构国际协调委员会赋予的“A 类”认可地位的国家人权机构。

** 作为附件，仅以原文印发。

ANNEX

**The Inputs from NHRC of Nepal on the Special Rapporteur Mr. James Anaya's report on the situation of indigenous peoples in Nepal**

1. The National Human Rights Commission Nepal (NHRC) appreciates Mr. James Anaya's visit to Nepal during Nov-Dec, 2008 and his meeting with NHRC Nepal. We commend his efforts for the preparation of such a comprehensive report on the human rights situation of indigenous population *(adibashi janajati*) of Nepal.

2. After receiving the report NHRC intended to receive inputs of the CSO and NGOs working in the field of rights of indigenous people, and organized a workshop, with some 40 participants, on Mr. Anaya's report.

3. The rights of minorities including indigenous one is identified as a priority issue in the NHRC strategic plan of 2008-11 followed by NHRC annual work plan of 2008-09.

4. Based on the inputs received from the consultation meeting we are to submit the following comments, observations and suggestions on the report.

5. The Special Rapporteur has extensively reviewed the human rights situation of the *adivasi janajati* in general, and in the context of ongoing constitution-making process and State commitment to secure their rights.

6. Mr. Anaya's view of Nepalese indigenous people face human rights related problems because of historical subjugation may not be fully objective analysis in Nepalese context. In case of privilege to some class by state authority, that has much to do with the tradition and culture along with the attitude of ruling clan in favoring their loyal, irrespective of any caste or creed. This element may be pertinent in defining indigenous people. The relation of caste and profession depends not only on subjugation but on tradition as well. So the definition of *adivasi janajati* may be revisited in this direction.

7. The establishment of a task force from the government's side on the implementation of ILO Convention 169 has positive impacts. NHRC appreciates Mr. Anaya's emphasis that the task force should take into account the provisions of the Declaration as well. The Committee to some extent may interpret the Convention and develop measures to implement its various provisions. In addition NHRC has also suggested forming a high level land reform commission to address the issue of land.

8. The participation of indigenous communities in the Constituent Assembly (CA) is a positive indicator. However, to safeguard the rights of the *adivasi janajati*, legal and administrative measures may need to reform in the direction of ILO169. ILO 169 was ratified by Nepal in less than a year before and therefore the impact has yet to be seen. However, the forthcoming constitution of Nepal is expected to ensure the rights of indigenous peoples and issues of social inclusion in line with ILO 169 and UN Declaration.

9. Human rights defenders also need to be alert for the protection of the rights of those people including rights relating to livelihood issues. Access to natural resources should be provided. As observed by Mr. Anaya indigenous communities rank low in all human development indicators

having suffered gradual loss of traditional lands and access to life-sustaining natural resources and therefore this issue should be seriously considered.

10. To ensure over all development of children including strengthening of their cultural identities, the government is expected to launch specific programs. NHRC has already recommended the government of Nepal to eradicate the *Kamalari* (practice of bonded child labor at the home of loan giver in order to pay loan taken by the father of the child) and to rehabilitate children who have been victims of that practice. The constitutional guarantee of bilingual education should be implemented with great care as it should contribute in the full development of the indigenous children along with the protection and promotion of their culture

11. Regarding the Megha projects like Melamchi drinking water, not only the *adivasi* but also the other communities also should have the opportunity of prior and free consent.

12. As a measure of advancement of the *adibasi jnajati* quota of reservation, whichever appropriate should be followed? In this regard the State should formulate appropriate policies and plans with adequate resources. . In addition NHRC will work hard to equip these people and their organizations in strengthening for advocacy for their rights

13. Significant number of participants of workshop opined that a thematic committee to look into the rights and interest of *adibasi janajati* within the CA.

14. The State has to create an environment, which is conducive to enjoy their right to livelihood, self-identification, representation in making and implementing programs and policy that affects their lives.

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