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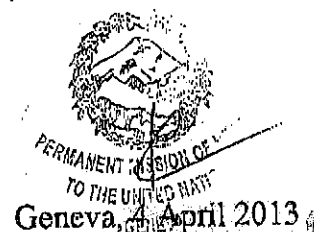
संयुक्त राष्ट्र संघका लागि नेपालको स्थायी नियोग
PERMANENT MISSION OF NEPAL
TO THE UNITED NATIONS
GENEVA



Mo. G/SR/515

The Permanent Mission of Nepal to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights, Special Procedures Branch, and with reference to the allegation letter AL/Indigenous (2001-8) NPL 5/2012 sent by Special Rapporteur on the rights of indigenous peoples Mr. James Anaya dated 15 October 2012, has the honour to transmit herewith the response received from the concerned authorities of the Government of Nepal in this respect.

The Permanent Mission of Nepal to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights, Special Procedures Branch, the assurances of its highest consideration.



Office of the United Nations High Commissioner for Human Rights
Special Procedures Branch
Palais des Nations
CH-1211 Geneva 10.

OHCHR REGISTRY

04 APR 2013

Recipients: SPB
S. Lidorne (Encl.)

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Response of the Government of Nepal
on
the Letter dated 15 October 2012 from
the Special Rapporteur on the Rights of Indigenous Peoples

The Government of Nepal wishes to make the following comments on the contents of the letter dated 15 October 2012 received from the Special Rapporteur on the Rights of Indigenous Peoples Mr. James Anaya:

1. With the expiry of the term of the Constituent Assembly in May 2012, the Government of Nepal (GoN) continued to engage in facilitating constructive dialogue among major political parties and civil society to hold the election to a new Constituent Assembly at the earliest. The GoN has been focusing on sustainable peace, inclusiveness, prosperity, and good governance for the upliftment of the Nepalese society.
2. The progressive restructuring of the State in order to resolve the existing problem of the country relating to class, caste, religion and gender has been a top priority of the Government. Similarly, the socio-economic transformation of the country and the principle of federalism have been its core values.
3. The GoN fully believes that the future Constitution would be a document coming out of national consensus that would duly reflect the hopes and aspirations of all communities, including the indigenous people of Nepal. Meaningful and effective participation of indigenous people will be ensured in the Constitution making process through various mechanisms such as proportional electoral system, wide consultation and opinion collection in the process of Constitution drafting, mobilization of organizations related to indigenous tribe, mass media and awareness campaign, among other things.
4. The Interim Constitution of Nepal, 2007 clearly states that Nepal is a multiethnic, multilingual, multi religious and multicultural country. Article 3 of the Constitution defines Nation as "having multiethnic, multilingual, multi religious, multicultural characteristics with common aspirations, and being committed to and united by a bond of allegiance to national independence, integrity, national interest and prosperity of Nepal, all the Nepali people collectively constitute the nation." Discrimination on any ground and in any form is strictly prohibited by the Constitution and relevant laws. Nepal has been a secular State since the proclamation of the then House of Representatives in 2006. All the languages spoken as mother tongues in Nepal have been regarded as national languages. Twenty one fundamental rights, including right to freedom, right to equality, right against untouchability and caste discrimination, education and cultural rights, right to property, rights of women, right to social justice, rights of children, right to religion, and right regarding labour, have been guaranteed by the Constitution. Enforcement of these rights is guaranteed under the right to constitutional remedy. Likewise, the Constitution has created obligations for the State

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- to carry out an inclusive, democratic and progressive restructuring of the State by eliminating the form of centralized and unitary structure to address the problems related to women, indigenous tribes and *Dalits*, and to effectively implement international treaties and agreements to which Nepal is a party.
5. Since the promulgation of the Interim Constitution in 2007, a number of laws and policies have either been enacted or amended, as appropriate, to give effect to the provisions of the Interim Constitution. Among them, Caste Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, and Some Nepal Laws Amendment Act to Maintain Gender Equality, 2010 have been significant for the promotion and protection of human rights of all people including indigenous peoples. In addition, the GoN is in the process of enacting a number of laws, such as the penal code, criminal procedure code, civil code, civil procedure code, and sentencing act, in line with the Interim Constitution. Similarly, the current Three-year Interim Plan (2010-2013) and the National Human Rights Action Plan (2010-2013) incorporate a number of provisions for development, benefit and empowerment of indigenous people.
 6. Nepal is one of the few countries to have ratified the international instrument on indigenous people - the Convention on Indigenous and Tribal People (ILO Convention No. 169), which was ratified in September 2007. It has also a law related to indigenous nationalities in force since 2002.
 7. The National Foundation for Development of Indigenous Nationalities Act, 2002 clearly defines that "Indigenous People/Nationalities (Adibasi/Janajati)" means a tribe or community as mentioned in the schedule having its own mother tongue and traditional rites and customs, distinct cultural identity, distinct social structure and written or unwritten history. So far 59 indigenous peoples/nationalities have been enlisted in the schedule of this Act. The definition of indigenous people, provided by the Act, is in conformity with the international norms and standards.
 8. So far as the question of representation of the indigenous people in the last Constituent Assembly is concerned, it was composed on the basis of a mixed electoral system, which consisted of 240 members directly elected on the basis of the first-past-the-post electoral system, 335 members on the basis of the proportional electoral system, and 26 members nominated by the Council of Ministers on the basis of political understanding from amongst the prominent persons who have rendered outstanding contributions to the national life, and the indigenous peoples which had not been represented through the elections. Moreover, in order to ensure the representation of all segments of the society, the Interim Constitution required the political parties to take into account the principle of inclusiveness in enlisting candidates to ensure proportional representation of the women, *Dalits*, oppressed communities/indigenous peoples, backward regions, *Madhesis* and other classes. Under these provisions, out of 601 members of the Constituent Assembly, 216 members were from the Indigenous

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Peoples/ Nationalities. The Chairman of the Constituent Assembly himself belonged to an indigenous community.

9. With reference to the particular incident of Kawasoti and death of Mr. Dhan Bahadur Thanet, it may be noted that there was a general strike organized by a group of people and simultaneously there was another group heading towards their programme in Butwal. Both the groups came across and it was almost certain to have a violent clash between the two groups. Therefore, the local administration had deployed the joint security forces of the Nepal Police and the Armed Police Force to control the situation and maintain law and order. The violent groups attacked the security forces and snatched one pistol and six bullets. Several security personnel including two police Inspectors sustained severe injuries. It had become imperative for the security forces to use minimum force in order to prevent the clash and any other untoward situation. During the action of the security forces, Mr. Dhan Bahadur Thanet sustained bullet injury and subsequently died almost one month later while undergoing treatment in hospital. The family of the victim has already been compensated by the GoN with the amount of one million rupees (NRs. 1,000,000).
10. Similarly, there was a clash between two agitating groups in Dhangadhi and the security forces used minimum forces to disperse the crowd. Despite having injuries to some of the agitating people and security forces there was no casualty during the clash.
11. With reference to the alleged incident of March 2009, it may be noted that the GoN has not filed any case against any group of the people on the charges of crime against the integrity of the State. Therefore, the allegation is baseless.
12. The GoN believes that while drafting a new Constitution, the political parties of Nepal will take into account all the commitments expressed in the Interim Constitution as well as commitments they have already agreed upon during the course of negotiations in the erstwhile Constituent Assembly, in addition to other commitments in favour of the indigenous and marginalized people.
13. The GoN would like to reiterate that it will respect and fulfill its national and international commitments related to the indigenous people.

