**FIAN Nepal**

**Written Submission to** the UN Special Rapporture on the Contemporary forms of racism

Focusing to the guiding questions: **Relationship between environmental degradation and climate change-related harms and other forms of systemic/structural discrimination, for example, racial inequalities in access to housing, access to food, access to clean water and access to healthcare**

1. **Existing Legal Safeguard -** With the promulgation of the Constitution, the GoN has guaranteed to end all forms of discrimination and oppression created by the feudalistic, autocratic, centralized, unitary system of governance and has reaffirmed to protect and promote social and cultural solidarity, tolerance and harmony. It is committed for unity in diversity by recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural and diverse regional characteristics, resolving to build an egalitarian society founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, geographic region, language, religion, gender and all forms of caste-based discrimination[[1]](#footnote-1). In addition to this, the State has also demonstrated its commitment to ensure democratic norms and values including the people's competitive multiparty democratic system of governance, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, freedom of expression, independent, impartial and competent judiciary and rule of law in an attempt to build a prosperous nation[[2]](#footnote-2).
2. **General Framework for Protection of Human Rights -** The general legal framework for the protection and promotion of human rights in Nepal are set out in the Constitution relevant laws policies and judicial decisions. Nepal has several human rights assembly[[3]](#footnote-3) and institutions[[4]](#footnote-4) responsible for the protection of human rights at national, state and local levels.
   1. **Right to Clean Environment:** (1) Every citizen shall have the right to live in a clean and healthy environment. (2) The victim shall have the right to obtain compensation, in accordance with law, for any damage caused by environmental pollution or degradation. www.lawcommission.gov.np 16 (3) This Article shall not be deemed to prevent the making of necessary legal provisions for a proper balance between environment and development in development works of the nation.
   2. **Food security and climate change in Nepal**: Food insecurity and malnutrition is one of the [major](https://docs.google.com/document/d/1YJ-v01o0r3e3FK7tTZs3RjNgMtadTQflSCM5Ijj7lM4/edit) health issues caused by climate change[[5]](#footnote-5). It is unquestionably the most important consequences to the poor and least developed countries like Nepal where about [quarter of the population](https://www.feedthefuture.gov/country/nepal) are living in poverty, 4.6 million people are food-insecure, (with 20 percent of households mildly food-insecure, 22 percent moderately food-insecure, and 10 percent severely food-insecure[[6]](#footnote-6)). Around 30,845 hectares of land[[7]](#footnote-7) owned by almost five percent of households became [uncultivable](http://thediplomat.com/2017/08/climate-change-and-food-security-in-nepal-why-the-developed-world-must-step-up/) due to the climate-related hazards[[8]](#footnote-8)”. Majority of the land under cultivation ([76%](http://nepal.mercycorps.org/pdf/climate-change-agriculture-and-food-security-in-nepal.pdf)) is rain-fed which has been affected by the erratic patterns of rainfall, drought, flash floods, landslide et cetera over the years. The most relevant example of how unprepared we are to the climate-related risks is the occurrence of flash flood in 2017 which caused [80%](https://www.heifer.org/join-the-conversation/blog/2017/August/heifer-projects-in-nepal-affected-by-flooding.html?msource=SODSI17TW0004) of the southern agricultural belt to submerge in water causing a loss of about [57 million USD](https://docs.wfp.org/api/documents/WFP-0000022395/download/) of agricultural crops and also claimed hundreds of lives. Climate change not only affects agricultural production and availability of food in Nepal but also creates a negative impact on access to food for the poor, reducing their purchasing power and hence pushing them further towards the whirlpool of food insecurity and malnutrition.
3. **Racial discrimination: Discrimination against Dalit Communities/Haliya -** despite the adoption of the Caste-based Discrimination and Untouchability (Offence and Punishment) Act in 2011, there is still lack of its effective implementation resulting the persistence of *de facto* discrimination against the *Dalit c*ommunity. In addition to this, people have echoed that National *Dalit* Commission lacks the sufficient resources along with the non-implementation of its recommendations. Discrimination towards *Dalits* still exists but in different forms. For instance, the invisible equality is practiced in public sphere and functions in the day to day life and cast based discrimination and untouchability is profoundly practiced. Practices like purifying through pure water after touching *Dalits,* avoiding eating with Dalits and restrictions to inter into non-Dalit *home* are still practiced in many parts of the country especially rural and some of the urban are of Nepal. Facing all the odds and challenges *against* the cases of discrimination against *Dalits*, police officers have been found unwilling to register such case and often initiated for the mediation. The implementation of law found to be very weak as the FIRs (First Information Reports) are not registered easily and huge efforts have to be made in the police stations in the cases of caste discrimination and untouchability.

**Case – I: Dalit/Haliya landless people of Bajhang and Bajir districts-** altogether 1741 member of Dalit communities (18 household and 107 members in Bajhang districts 1634 member in Bajura district) in Bajhang and Bajur districts[[9]](#footnote-9) of Sudur Pachim province of Nepal have facing the unkindness even Haliya system has been eliminated on 6 September 2008 by the Nepal Government. They had been identified as a freed Haliya in 4 categories and also provided identity card. However, the Haliya is still landless, working and living in the landlord's properties/land as their issues are not yet address by the government through practical basis[[10]](#footnote-10). The Haliy of these districts have been living under distress and agony as like the citizen less even they are also a citizen of Nepal. It is being happened due they are Dalit and landless and their right to live is almost zero in terms of their right to land, shelter/housing, food, health and nutrition.

1. **Discrimination against indigenous community –** Nepal being a multi-ethnic, multi-lingual, multi-religious, multi-cultural society with aspirations of people living in diverse geographical regions has prevalence of underlying caste - based conflicts. The underlying caste based hierarchy has also been a cause of many violent outbursts impacting lives and livelihoods. Nepal is state party to a large number of treaties[[11]](#footnote-11) and has subsequently introduced number of legislations to eliminate caste based discrimination. However, their implementation status is still not satisfactory. It is believed that the primary reason for such a situation is largely due to non-allocation of needed funding, diversion of such funding into fulfilment of different needs, ignorance of general public regarding exiting mechanisms and provisions and finally the inadequate capacity of State's apparatus. A more serious inhibition to such discrimination comes from social and political resistance by dominant groups across multiple state institutions, such as political parties, the bureaucracy, the courts, public officials and law enforcement agencies[[12]](#footnote-12).

According to The National Foundation for Development of Indigenous Nationality (NFDIN) Act, 2002, 59 indigenous communities are legally recognized[[13]](#footnote-13) as indigenous peoples (IPs) of Nepal. Through legal recognition, they are eligible to access certain government resources and benefits (social security)[[14]](#footnote-14) allocated for endangered and highly-marginalized IPs.[[15]](#footnote-15) The Nepalese Government, OPMCM[[16]](#footnote-16) took a decision on 11 February 2009 towards the re-identification and correction of the IPs list as per the NFDIN Act and identified 24 new IPs communities. However, till date, these 24 IPs are still not legally recognized, in spite of constitutional[[17]](#footnote-17) and international[[18]](#footnote-18) legal frameworks. They are thus deprived from the respective resources and benefits and end up being victims of discrimination. Further, as per the Constitution of Nepal an Indigenous Nationality Commission was formed in 2019[[19]](#footnote-19). However, this Commission is still not operational even after five years of formulation of the constitution, as the Government has not yet allocated the respective financial and human resources to the commission. As a consequence, IPs of Nepal are still not fully integrated into the state mechanisms, and are increasingly endangered with regard to their access to natural and productive resources, as well as traditional customary institutions and all these meant are to be stateless and being violating their fundamental human rights.

**Case – II: Sonaha IP community struggles to be legal recognition for their human rights -** Sonaha are one of the endangered landless indigenous communities[[20]](#footnote-20), living in the belt of Karnali and Mahakali River, in the buffer zone areas of Bardiya National Park, Bardiya district. The total population of Sonaha is 1180. Their traditional occupations are gold panning and fishing in the Karnali River. Bardiya National Park had been established by the Nepal government in 1988 as per the National Parks and Wildlife Conservation Act, 1972[[21]](#footnote-21). As the Sonaha are not yet officially recognized, they are not allowed to follow their traditional occupation. In addition, they cannot access government livelihood support programs targeted to marginalized communities e.g. livelihood support, road construction and maintenance, support to schools, support to flood affected people of buffer zone areas etc. As per the provisions of the National Parks and Wildlife Conservation Act, 1972 5th amendment, 30-50% of the national park annual income has to be spent for community development, and is thus supposed to benefit the Sonaha as well.

In October 2014, representatives of the Sonaha filed a writ petition in the Supreme Court against several concerned government agencies.[[22]](#footnote-22) On 2 December 2015, the Supreme Court decided to: a.*list Sonaha people as indigenous nationality, b. Provide the facilities as per the law provisioned for indigenous peoples, c. Provide necessary environment to promote their traditional occupation and livelihood dependent on fishing with their traditional knowledge and skill, d. Preserve community identity, culture and traditional occupation with alternatives and other programs for their livelihood[[23]](#footnote-23)*. However, the Supreme Court Verdict in regards to Sonaha is still not implemented[[24]](#footnote-24).

**Case III - Brutal torture Killing of Chepang Indigenous Community and its Member –** Chitwant National Park authorities and security personnel burnt (2 houses) and destroyed 8 houses of Chepang community using elephant it Kusum Khola of Madi Municipality, Chitwan on 2077/04/02 (18 July 2020)[[25]](#footnote-25). The Chepang settlement is buffer zone area of Chitwan National Park and the community has been living there since August 1996. This area is occupied by Chitwan National Park as a buffer zone area without having any free, prior and informed consultation and consent with Chepang indigenous community even lives of Chepang has been depending on this land and forest in terms of livelihood and human right to life. Likewise, security personnel of National Park also captured 7 local peoples (2 women and 5 men) of Rapti Municipality – 2 of Chitwan and convicted brutal torture to all 7. Through this torture, a 24 years Chepang boy has been died and other six has been suffered badly by the security personnel and back home after health treatment. The national park authorities behaved to Chepang indigenous community peoples against the constitutional provisions[[26]](#footnote-26) and other fundamental human rights treaties and conventions[[27]](#footnote-27) which are also ratified by Nepal government as being a state party. This case indicated that, state is violating indigenous communities' civil and political rights including economic, social and cultural rights and not making them to realize human rights as a human being.

Nepal has a Gender Inequality Index (GII) value of 0.480, ranking it 118 out of 160countries in the 2017 which also resulted due to inadequate special provisions to address the needs of women. The government has failed to enact law to implement the special opportunity provision under fundamental rights of women as per Article 47 of the Constitution. The Constitution has further limited the special provision by adding the condition of ‘lagging behind socially and culturally’ which indicates that the positive discrimination may not extend to all women but only those who are proven to fulfil the condition[[28]](#footnote-28).

1. **Discrimination against Dalit women Living with HIV -** Women living with HIV/AIDS (WLHA) are at particular high risk of living a painful, shameful life of exclusion. Discrimination for women can discourage them from seeking vital medical and psychological care they need during the illness. HIV stigma in women is associated with rejection from friends and family, society, feelings of uncertainty and loss, low self-esteem, fear, anxiety, depression and even suicide in some cases. Though the known number of women with HIV is less than the number of known cases among men, it is escalating and the epidemic is hitting women hard in Nepal. Gender inequities and poverty have increased the vulnerability of women to HIV risk behaviours and exposure. Acknowledging the constitutional provisions to guarantee universal access to basic health services, the Government of Nepal has developed the Nepal Health Sector Strategy Implementation Plan 2016 (Nepal Health Sector Strategy (NHSS) 2016/17-2020/21) and committed to “Improved access to health services, especially for unreached population”, in particular to “Increase access to CD4 count machine”.[[29]](#footnote-29) HIV positive women are provided free Antiretroviral Therapy (ART).[[30]](#footnote-30) However, while undergoing the therapy, there is the need for a more nutritious food intake, which, women living with HIV are not always able to access and are thus vulnerable for additional health problems.

**Case – IV: Right to Health of Dalit Women Living with HIV –** Barabis villages which has almost 9000 inhabitants, is situated in Bajura, is one of the remote and least developed districts. 26 people are infected with HIV/AIDs, 11 are female and 15 are male, and most of them belong to the Dalit community. The disease is usually contracted by men, who go as migrant workers to India to earn a living, and transfer the infection to their wife. Working as seasonal worker in India is a common practise, as many people, particular Dalits, are either landless or own only small and marginal plots of land, and employment opportunities in the area are scarce. Women have triple-fold responsibilities (care work, household tasks and wage labour work) even while living with HIV. Regular ART is difficult, as the ART site in the district is far (in Dhangadi). Many infected women do not have time to travel as they need to engage in labor work and household care. In addition, they are not physically fit to undertake long travels due to lack of adequate food and nutrition. [[31]](#footnote-31) Affected women are demanding free CD4 count in their own district, nutritious food, skilled development training and facilities for their livelihood, education for their children and to be free from stigma.

**Recommendations**

FIAN requests the Committee Members to consider recommending the Nepal Government:

1. The government should fully implement Committee Recommendations (2014) implementing effectively of existing laws/policies provisions through operating Dalit and Indigenous Nationality Commission and secure fundamental human rights for their dignified life.
2. The government should improve the mechanisms and methodologies to identify and legal reorganization of indigenous peoples as per the provisions indigenous peoples right's legal frameworks
3. The government should ensure that, indigenous and other communities should have right to live their specific land and territories and accept their traditional occupation for their human right to food
4. The government should ensure the access to government health and nutrition services and facilities especially for Dalit women living with HIV/AIDS for their human rights to health.

1. Constitution of Nepal 2072 (2015), preamble para, available at <http://www.lawcommission.gov.np/?workflow_state=prevailing-laws-constitution> [accessed on 10 April, 2016] [↑](#footnote-ref-1)
2. Ibid [↑](#footnote-ref-2)
3. Federal, state and local level assemblies [↑](#footnote-ref-3)
4. National women’s commission, National Dalit commission,, National inclusion commission, Indigenous Nationalities commission, Madhesi commission, Tharu commission, Muslim commission and, Language commissions. [↑](#footnote-ref-4)
5. <https://kathmandutribune.com/climate-change-and-nepals-food-insecurity/Posted> 30 Sep 2017 [↑](#footnote-ref-5)
6. Nepal Demographic and Health Survey, 2016 [↑](#footnote-ref-6)
7. Central Bureau of Statistics (CBS) of Nepal [↑](#footnote-ref-7)
8. https://reliefweb.int/report/nepal/climate-change-and-nepal-s-food-insecurity#:~:text=Climate%20change%20not%20only%20affects,of%20food%20insecurity%20and%20malnutrition. [↑](#footnote-ref-8)
9. As per the FIAN Nepal case study and district Land Revenue Office, Bajhang and Bajura [↑](#footnote-ref-9)
10. Providing and or managing land and shelter to freed Haliya in their own place as per the Freed Haliya Rehabilitation Problem Solving Committee Formation Order, 2070, [↑](#footnote-ref-10)
11. ILO Convention on Indigenous and Tribal People's Convention No. 169, Convention on the Elimination of All Forms of Racial Discrimination (ICERD)  [↑](#footnote-ref-11)
12. Fifth and Sixth periodic reports of the Government of Nepal on measures taken to give effect to the international covenant on civil and political rights (ICCPR), Human Rights Treaty Monitoring Coordination Center (HRTMCC), September 2020 [↑](#footnote-ref-12)
13. Annex – I of NFDIN Act (2058) listed all the 59 identified and legally recognized indigenous communities of Nepal [↑](#footnote-ref-13)
14. Endangered IPs of Nepal eligible to get NRS 1000 per month per person [↑](#footnote-ref-14)
15. Highly marginalized IPs of Nepal eligible to get the government supports such as free education and citizen housing scheme [↑](#footnote-ref-15)
16. Office of Prime Minister and Council of Ministers (OPMCOM) [↑](#footnote-ref-16)
17. Fundamental rights of Constitution of Nepal – Article 18 – Right to Equality:” (…) nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or development of the citizens including the socially or culturally backward women, *Dalit*, indigenous people, indigenous nationalities (…)”, and Article 42: Right to Social Justice: “Socially backward women, *Dalit*, indigenous people, indigenous nationalities (…) shall have the right to participate in the State bodies on the basis of inclusive principle.” [↑](#footnote-ref-17)
18. International Labour Organization, Indigenous and Tribal Peoples Convention No. 169 (Article 2 – Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply), and United Nation Declaration on the Rights of Indigenous Peoples [↑](#footnote-ref-18)
19. Constitution of Nepal – Article 261 - Indigenous Nationalities Commission: (1) There shall be an Indigenous Nationalities Commission of Nepal [↑](#footnote-ref-19)
20. Endangered indigenous communities – less in population, high maternal and child mortality rate, lack of access to education and other facilities, low life expectancy in compare to other community [↑](#footnote-ref-20)
21. Act 5th Amendment in 2017 and published in Nepal gazette on 2073/12/17 (30 March 2017) [↑](#footnote-ref-21)
22. OPMCOM, NFDIN, Ministry of Federal Affair and Local Development, Ministry of Women Children and Senior Citizen, District Development Office Bardiya, Bardiya National Park and District Forest Office Bardiya [↑](#footnote-ref-22)
23. Supreme Courte Verdict (071 WO 0257) date, 2072/08/16 (2 December 2015) [↑](#footnote-ref-23)
24. FIAN Nepal Case Documentation of Sonaha Community Right to Food Violation and regular Case Work following the case documentation (2011 to till date) [↑](#footnote-ref-24)
25. Reported by local right to food promoter which produced by FIAN Nepal – Indira Bote, representatives of NEFIN district chapter and Chepang community people [↑](#footnote-ref-25)
26. Article 16 (right to dignified life), article 22 (right to be free from torture) article 36 (right to food and food sovereignty), article 37 (right to housing), article 42 (right to social justice and more [↑](#footnote-ref-26)
27. International Convention on Economic Social and Cultural Rights (ESCR) 1966, International Convention on Civil and Political Rights (ICCPR) 1966, ILO Convention No. 169 – Indigenous and Tribal Peoples Convention – 169 and so on [↑](#footnote-ref-27)
28. Fifth and Sixth periodic reports of the Government of Nepal on measures taken to give effect to the international covenant on civil and political rights (ICCPR), Human Rights Treaty Monitoring Coordination Center (HRTMCC), September 2020 [↑](#footnote-ref-28)
29. https://climate.mohp.gov.np/contact-us-page/31-acts/163-nepal-health-sector-strategy-implementation-plan-2016-2021 [↑](#footnote-ref-29)
30. Nepal has a National Policy on HIV and STI, 2011. Its guiding principle is to ensure the citizens' right to primary health by keeping the national and international standard. There is provision for focal points (desks) on HIV/AIDS in Prime Ministers’ Office, National Planning Commission and line ministries. It further talks about Multi-sectoral HIV/AIDS strategy development and implementation for extend HIV/AIDS issue beyond health sector at the present stage. [↑](#footnote-ref-30)
31. FIAN Nepal case documentation and regular case work on the issues related to Dalit women‘s right to food violation by not accessing health services [↑](#footnote-ref-31)