

Submission to the UN Special Rapporteur on the Right to Development, Mr. Surya Deva

Submitted by: Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)

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1. Introduction

The Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), established in 1995, is a pioneering legal organization representing Indigenous jurists in Nepal. Its primary mission is to promote collective Indigenous rights through strategic legal advocacy, human rights enforcement, and the advancement of justice rooted in Indigenous perspectives.¹

LAHURNIP envisions a society in which the Indigenous Peoples of Nepal fully and effectively exercise their collective rights, including self-determination; ownership, control, and governance of their lands, territories, and natural resources; recognition of their customary rights and justice systems; and development in accordance with their own priorities. The organization works toward a future free from colonization, discrimination, racism, and domination, where Indigenous Peoples participate meaningfully in decision-making at all levels of the State through their freely chosen representatives, realizing their full potential with equality, dignity, and respect for their inherent rights.² LAHURNIP was recently honored with the **2025 Human Rights and Business Award (USA)** in recognition of its tireless work in holding corporations accountable and defending the rights of Indigenous communities against harmful business practices³.

In Nepal, "development" is frequently used as a pretext for the dispossession of Indigenous lands. LAHURNIP currently manages numerous cases where large-scale infrastructure projects; including hydropower plants, high-voltage transmission lines and highway expansions have been initiated without the consent of Indigenous Peoples, leading to forced displacement and cultural erosion. Furthermore, under the guise of a "**Just Transition**" and the expansion of **National Parks and Protected Areas**, Indigenous peoples are being displaced from ancestral territories. Projects like the **Cable Car project** further demonstrate how commercial interests are prioritized over Indigenous sacred sites and the right to self-determined development.

This submission provides the Special Rapporteur with an Indigenous Peoples-centered analysis of the **right to development** in Nepal, highlighting how current development models fail to ensure active, free, and meaningful participation as required by international standards, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). It further examines the nexus between **participation, peace, and development**, illustrating how the exclusion of Indigenous Peoples from decision-making creates structural violence and undermines the prospects for sustainable peace.

This paper is structured as follows: first, it provides a contextual overview of Indigenous Peoples in Nepal in relation to development-induced displacement and conflict. It then details the relevant legal and constitutional provisions governing participation. This is followed by specific responses to the Special Rapporteur's questionnaire, focusing on the barriers to participation, the interplay between participation and Free, Prior and Informed Consent (FPIC), the role of businesses, and the necessity of enabling environments. Finally, it provides a **conclusion** and concrete **recommendations**.

¹ For more information see: <https://www.lahurnip.org/we-and-our-vision>

² ibid

³ LAHURNIP named 2025 recipient of Human Rights and Business Award, <
<https://www.humanrightsandbusinessaward.org/award-recipient/lahurnip/>>

2. Context of Indigenous Peoples in Nepal

In Nepal, “Indigenous Peoples” are officially defined as ethnic communities listed in the national Schedule that possess their own mother tongue, traditional rites and customs, a distinct cultural identity, a distinct social structure, and a written or unwritten history⁴. This definition reflects a formal, criteria-based approach in which language, culture, social organization, and historical continuity are central elements for recognition.

At present, 60 Indigenous groups are formally recognized by the State under this framework. However, the 2021 national census identifies 22 additional Indigenous groups that have not yet received official recognition. This discrepancy highlights an important gap between census data and the legal recognition process, suggesting that the current list of recognized groups does not fully reflect the diversity of Indigenous communities present in the country.

According to the 2021 census, Indigenous Peoples represent 35% of Nepal’s total population of 29,164,578, amounting to 10,207,073 individuals. These figures are drawn directly from official census data and provide the most recent nationwide demographic snapshot.

At the same time, Indigenous scholars, experts, and representative organizations argue that this percentage significantly underestimates the actual Indigenous population. They contend that the true proportion exceeds 50%, pointing to concerns that many Indigenous individuals and communities were undercounted, misclassified, or omitted during the census process⁵. Such concerns relate to how census categories are designed and applied in practice, how people self-identify, and how enumerators record identity in contexts where multiple ethnic, linguistic, and social affiliations may exist.

As a result, the available data present two parallel realities: an official demographic account based on the census and legal recognition framework, and an alternative assessment advanced by Indigenous Peoples who question whether existing statistical and administrative mechanisms adequately capture the full presence and diversity of Indigenous Peoples in Nepal.

3. Legal and Policy Framework:

3.1 International Commitments

Nepal is a signatory to the **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)** and is the only country in Asia to have ratified **ILO Convention No. 169**. These instruments mandate Free, Prior and Informed Consent (FPIC) as the standard for any development affecting Indigenous territories

3.2 Constitutional Analysis: Theoretical Safeguards

The **Constitution of Nepal (2015)** contains specific "Policies of the State" (Article 51) intended to protect Indigenous rights, yet these remain largely non-justiciable and unimplemented:

- **Article 51 (j) (8):** Expressly mandates the State to ensure Indigenous nationalities **participate in decisions concerning their community** through special provisions, ensuring their right to live with dignity and identity while protecting their traditional knowledge and skills.
- **Article 51 (g) (8):** Specifically adopts the principle of **Prior Informed Consent (PIC)** and the precautionary principle in environmental protection and sustainable development.

3.3 National Action Plan on Business and Human Rights (NAP-BHR)⁶

Nepal’s NAP-BHR (2023-2027) includes promising commitments, but LAHURNIP highlights that these remain decorative without legislative enforcement. Key points from the NAP include:

⁴ Section 2(a), National Foundation for Development of Indigenous Nationalities Act, 2058 (2002)

⁵ National Report on caste/ethnicity, language & religion, NSO Nepal, Population Census 2021, p 1. <https://censusnepal.cbs.gov.np/results/downloads/caste-ethnicity?type=report>

⁶ See more <https://www.lahurnip.org/uploads/resource/file/nap-on-bhr-nepal.pdf>

- **Action Plan 34:** Commitments to ensure **meaningful participation and FPIC** for Indigenous Peoples, Dalits, women, and traditional institutions in Environmental and Social Impact Assessments (IEE/EIA/SIA).
- **Action Plan 35 & 36:** Commitments to implement **CEDAW recommendations** regarding Indigenous women and to align environmental standards with international law.
- **Action Plan 112 & 113:** Provisions for **remedies** through local levels or alternative dispute resolution (ADR) for rights violations by business activities, and stricter regulation of **multinational companies**.

4. Part (A): Participation in Development

1. How should active, free and meaningful participation look in practice?

For Indigenous Peoples in Nepal, participation must be **Self-Determined**. It requires the State and developers to move beyond "informing" communities and toward **negotiating** with them through their own traditional institutions (e.g., *Barghar*, *Guthi*, *Mukhia*). In practice, this means:

- **Recognition of and Engagement with Customary Institutions:** Instead of creating parallel project-based committees, the State and developers must formally recognize and reach out to legitimate Indigenous customary institutions—such as the **Barghar** (Tharu), **Guthi** (Newar), and **Mukhia/Jimmawal** systems. These are the traditional authorities through which Indigenous Peoples have governed their resources for generations.
- **Full and Clear Disclosure:** Participation is only meaningful if it is **Informed**. This requires project proponents to clearly explain not only the benefits but also the long-term risks to lands, water, medicinal plants, and sacred sites. Information must be provided in a transparent, honest, and accessible manner before any licenses are issued.
- **Language Justice:** To ensure the inclusion of community elders and women, all technical data, maps, and impact assessments (EIA/SIA) must be translated into **Indigenous mother tongues**. Presenting complex documents only in Nepali or English constitutes a structural barrier to participation.
- **Respect for Collective Timelines:** Indigenous decision-making is often collective and consensus-based. "Active participation" requires that developers allow **enough time** for the community to discuss the project internally using their traditional protocols, free from external deadlines or pressure from "fast-tracked" state agendas.
- **Safe and Enabling Spaces:** The State must ensure a proper time and place where communities can talk **freely** without the presence of security forces, project contractors, or local political agents who may use intimidation. A neutral, culturally appropriate environment is essential for the "Free" component of participation and consent.

2. Main barriers to participation and how to overcome them?

- **Legal Non-Recognition:** The exclusion of 22 Indigenous groups from official census data prevents them from accessing formal participation mechanisms.
- **"National Pride" Narrative:** The State uses this label to bypass social and environmental safeguards, effectively criminalizing dissent.
- **Overcoming Barriers:** States must harmonize domestic laws with **ILO Convention No. 169** and **UNDRIP**, ensuring that "National Pride" does not equate to "Rights Deprivation."
- **Lack of Proper and Honest Information:** Communities are often presented with a project's "benefits" while negative environmental and social impacts are hidden or downplayed.
- **Language Barriers:** Information and consultation processes are almost exclusively conducted in Nepali or English. By not using the **Indigenous mother tongue**, the State excludes elders and women who are the primary knowledge-holders of the land.

- **Inadequate Timelines (The "Short Time" Problem):** Projects are often "fast-tracked." Indigenous decision-making is a collective, consensus-based process that requires time. Forcing a community to decide within a few days or weeks is a violation of the "Free" and "Prior" components of FPIC.

3. Constitutional provisions, laws or policies introduced?

- Nepal's **Constitution (2015)** offers a theoretical framework through **Art 51 (j)(8)** (mandating participation in decisions concerning Indigenous communities) and **Art 51 (g)(8)** (pursuing the principle of Prior Informed Consent).
- **Good Practice: The National Action Plan on Business and Human Rights (NAP-BHR)**, specifically **Points 34 and 35**, commits to meaningful participation and FPIC for Indigenous Peoples and women.
- **The Gap:** These remain "policies" rather than "enforceable laws." They are non-justiciable, meaning communities cannot easily sue the State for their violation

4. Limitations in business consultation processes (Due Diligence)?

Consultations are currently "tick-box" exercises. Businesses frequently use attendance sheets from informative meetings as "proof of consent." Furthermore, as LAHURNIP has documented in numerous hydropower cases, **Human Rights Due Diligence** is often outsourced to firms that have no expertise in Indigenous rights and fail to account for the loss of ancestral connection to land.

5. How can UN entities ensure participation?

UN entities must ensure that "**Just Transition**" and climate finance are not used to fund displacement. They should refuse to partner with state or private actors who have active human rights complaints filed against them and establish independent Indigenous-led monitoring boards for all UN-supported projects.

6. Interplay between participation and FPIC?

Participation is the *process*; **FPIC is the mandatory standard**. Participation without the power of **Consent**—the right to say "No"—is merely a decorative exercise. For Indigenous Peoples, the Right to Development is inseparable from the right to grant or withhold consent regarding their territories.

7. Ensuring participation of groups with intersecting discriminations?

Following **NAP-BHR Point 35**, special measures must be taken for Indigenous women. Participation must be designed to bypass patriarchal community structures, ensuring women have separate caucuses to discuss impacts on water, forest resources, and traditional medicine.

8. How to create enabling conditions?

Enabling conditions require **Civic Space** and **Information Transparency**. This includes a moratorium on the criminalization of land defenders and the creation of "Technical Support Funds" that allow communities to hire their own independent experts to review project EIAs.

9. What remedies can be sought?

Consistent with **NAP-BHR Point 112**, remedies must include:

- **Judicial Injunctions:** Stopping project construction until participation requirements are met.
- **Restitution:** Returning lands taken without consent.
- **Benefit Sharing:** Ensuring communities are not just "consulted" but are permanent equity partners in any development on their land.

5. Part (B): Peace for Development

1. Reinforcing the nexus between the three pillars and root causes?

In Nepal, the root cause of conflict is the **exclusion of Indigenous Peoples from land and resource governance**. Structural violence is perpetrated when "development" is forced upon communities through militarization. Peace can only be sustained if the human rights pillar (specifically collective land rights) is treated as the foundation for the development pillar.

2. Measures to strengthen accountability and solidarity?

Accountability must be cross-border. International financial institutions (MDBs) must be held legally liable in their home jurisdictions for funding projects in Nepal that violate **ILO 169** and lead to community conflict. Solidarity should be expressed through the direct funding of Indigenous human rights organizations like LAHURNIP.

5. How can businesses contribute to preventing conflicts?

Businesses must move from a "security-first" to a "**rights-first**" approach. Currently, companies in Nepal hire private security or rely on state police to suppress Indigenous protests. To build peace, businesses must recognize Indigenous **Customary Institutions** as equal negotiating partners and respect their decision to reject projects that are culturally destructive.

6. Good practices in ensuring participation for peace?

A good practice is the inclusion of **Indigenous Youth** in conflict-prevention monitoring. Youth often act as the bridge between traditional elders and modern legal systems. Empowering them to monitor project compliance with the **NAP-BHR** can prevent the escalation of local grievances into violent conflict.

8. Realising the right to development in conflict-affected contexts?

In Nepal's post-conflict and current "development-conflict" zones, the Right to Development is realized through **Redress**. This means acknowledging the historical marginalization of Indigenous Peoples and ensuring that "Modern Nepal" is built on a foundation of **Consent**, not coercion. Development must be defined by the people affected, not imposed from the center.

6. Conclusion

For the Indigenous Peoples of Nepal, the "Right to Development" remains an unfulfilled promise. While the State's normative framework—including the Constitution and the National Action Plan on Business and Human Rights—contains the language of participation and consent, the practice on the ground is one of exclusion, coercion, and cultural erasure. Development that is forced upon a community through militarization or the bypassing of customary institutions is not development; it is a violation of human rights.

As the Special Rapporteur moves toward a model of "**planet-centered participatory development**," it is crucial to recognize that Indigenous Peoples are the primary stewards of the planet's biodiversity. Their active, free, and meaningful participation is not an obstacle to development, but the only way to ensure that development is sustainable, peaceful, and just.

7. Recommendations

Based on the evidence provided, LAHURNIP urges the Special Rapporteur to recommend the following to the State of Nepal and the international community:

To the State of Nepal:

1. **Enact a National FPIC Law:** Operationalize the "Prior Informed Consent" principle mentioned in **Constitution Art 51 (g)(8)** into a binding law that requires verified community consent before any development license is issued.
2. **Recognize Customary Institutions:** Legally recognize traditional Indigenous governance systems (e.g., *Barghar*, *Guthi*, *Mukhia*) as the formal authorities for negotiation and decision-making in development projects.

3. **Ensure Language Justice:** Mandate that all Environmental and Social Impact Assessments (EIA/SIA) and project disclosures are translated into and conducted in **Indigenous mother tongues** to ensure participation is truly "informed."
4. **Halt Coercive Projects:** Immediately suspend projects where communities have documented a lack of meaningful participation or have faced intimidation, specifically the **Mukumlung Cable Car** and the **Marsyangdi Corridor**.
5. **Decriminalize Land Defense:** End the use of security forces and the criminal justice system to suppress Indigenous Peoples who are exercising their right to participate in and dissent from development projects.

To UN Entities and International Financiers:

1. **Strict Conditionality:** Ensure that all climate finance and development aid (e.g., for "Just Transition" projects) are strictly contingent on **independent, third-party verification of FPIC**.
2. **Indigenous Monitoring:** Establish a permanent Indigenous-led monitoring mechanism to oversee UN-supported projects in Nepal to ensure they comply with UNDRIP.

To Businesses:

1. **Rights-Based Due Diligence:** Move beyond "tick-box" consultations. Businesses must conduct Human Rights Impact Assessments that specifically account for the **spiritual and intergenerational connection** Indigenous Peoples have to their lands and sacred sites.

Annexes

- **Annex 1:** CONSTITUTION OF NEPAL 2072.
- **Annex 2:** National Action Plan on Business and Human Rights