

# Statement on the Developments in Nepal Relating to the New Constitution

## AIPP Calls for the resolution of the political tension in Nepal with a Human Rights Framework

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The Asia Indigenous Peoples Pact (AIPP) calls for sobriety and peaceful resolution of the political tension in Nepal on the adoption of the new constitution of Nepal. The series of actions and counter-actions of political actors in Nepal reflects the historical, social and political conflicts that urgently require decisive action within the framework of upholding inclusive democracy, respect for human rights and peace based on social justice in the new Constitution of Nepal.

At the outset, AIPP stands firm and united with the indigenous peoples of Nepal in asserting the inclusion of the recognition of their individual and collectives rights in the new Constitution of Nepal consistent with the international human rights obligations of the government of Nepal.

First, the recognition of indigenous peoples must be based on internationally accepted standards set out by ILO Convention 169 that the government of Nepal has ratified. The enlisting of any communal group or indigenous nationalities cannot be done from any narrow political whim or circumstantial agreement overstepping and violating existing national and international standards. In this context,

the AIPP expresses serious concerns over the recent agreement of Nepal's government to enlist Khas-Arya (including Chhetri, Brahmin, Thakuri, Dasnami and Dalit) groups under the category of 'indigenous (adivasi) groups with rights'.<sup>1</sup> This agreement is clearly aimed at allowing certain groups to continue to dominate and muddle and diffuse the rightful entitlement of indigenous peoples to self-determination in the new Constitution. AIPP thereby calls for the withdrawal of this irrational agreement as it only serves to exacerbate the existing social and political conflicts.

Second, AIPP expresses solidarity and support to the indigenous people of Nepal in their struggles and demand for the legal recognition of their distinct collective identities and cultures, right to self-determination under a federal set-up of autonomous units, the right to their lands, territories and resources, the right to political participation and the requirement for their free, prior and informed consent on matters that concerns them. These rights are in line with the international human rights obligations of Nepal under ILO Convention 169 and UN Declaration of the Rights of Indigenous Peoples (UNDRIP). AIPP also expresses its solidarity and support to other marginalized groups in Nepal for the recognition of their democratic rights.

In this context, AIPP welcomes the 4-point petition submitted by around 320 of 594 current members of Nepal's Constituent

Assembly (CA) mandated to draft the new constitution for the country – to the dispute resolution sub-committee of the Assembly on 17 May 2012 demanding following in the new constitution:

- Demarcation and naming of federal structure in the new constitution based on the report of Committee on State Restructuring and Devolution of State Powers of the CA and majority report of High-Level State Restructuring Recommendations Commission;
- Assurance of the recognition of the rights of indigenous and other marginalized groups to proportionally inclusive representation in all state organs and levels;
- Formation of autonomous and protected areas based on ancestral territories and settlements of indigenous peoples (big and small ethnic groups) during restructuring of the state; and
- Assurance of rights of indigenous peoples to self-determination through autonomy, to Free, Prior and Informed Consent (FPIC) as fundamental right as well as the democratic rights of other marginalized groups.<sup>ii</sup>

The Constituent Assembly members representing indigenous peoples and other marginalized communities made this Petition in response to an earlier agreement among Nepal's major three political parties about future federal structure of Nepal without consultation and their effective participation and consent.

The AIPP is pleased by the agreement

between Nepal's government and indigenous peoples representatives on 22 May 2012 whereby the government committed to present the demands of indigenous peoples, mostly similar to those in the petition mentioned above, to the Constituent Assembly. The AIPP thereby calls upon all the political parties and members of the Constituent Assembly to adhere to these demands of indigenous peoples and marginalized groups that ensure inclusive democracy in the new Constitution of Nepal.

Third, in the course of long-drawn actions of indigenous peoples in asserting the recognition of their rights, AIPP has been informed of some excesses by police forces during peaceful protests of indigenous peoples. In particular, the protest actions of the Tharus in southwestern Nepal was met by military actions through the use of batons, rubber bullets and tear gas, seriously injuring at least ten of the protesters. We thereby call on the police forces of Nepal to exercise restraint in dealing with protest actions, and to respect the rights of citizens to peaceful assembly.

Fourth, the organized actions and other public programs of indigenous peoples in Nepal generated widespread support of communities as seen in recent protests of Newars in Kathmandu, indigenous peoples' march and conference in Pokhara in April and other activities of indigenous groups in different parts of country. These activities were attended by tens of thousands of indigenous peoples taking to the streets and public assemblies. Sadly, most large media agencies of Nepal never gave these action and programs due prominence or balanced reporting. On the other hand, the small actions of other groups were given prominent media coverage. While AIPP respects the freedom of media and rights

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of journalists, it is also important for media agencies to reflect diversity in their reporting and give attention to the issues and actions of marginalized groups. Meanwhile, AIPP particularly requests the international media agencies to independently monitor and report on the developments in Nepal including the issues and actions of indigenous peoples and other marginalized groups. This will facilitate the needed global attention in relation to the new constitution of Nepal and its implications to the life and struggles of marginalized groups long denied of social justice.

Finally, AIPP underscores the need for all political parties and members of the Constituent assembly of Nepal to set aside their own vested interests and unite and act decisively to grant the urgent need for inclusive democracy that empowers the marginalized groups and to ensure social justice and the respect for human rights as the foundation of the new constitution of Nepal. Unless this is guaranteed in the new constitution of Nepal, the political tension will continue to escalate leading the country back to its dark history of violent conflicts. At this historical juncture, the government of Nepal and all political parties must seize the moment to do the right thing by heeding the demands of the indigenous peoples and other marginalized groups.

cultural identity, distinct social structure and written or oral history. ILO Convention 169, to which Nepal is a signatory to, also clearly defines indigenous peoples on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. The time of conquest in the context of Nepal is widely understood as Gorkha conquest that began in 1744.

ii See <http://www.nepalisamachar.com/?p=3600>. Later, 4 of the 320 members were reported to have withdrawn their support to the petition.

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i Indigenous nationalities flay govt decision', The Himalayan Times, 18 May 2012, <http://www.thehimalayantimes.com/fullNews.php?headline=Indigenous+nationalities+flay+govt+decision+&NewsID=332573> According to the Act for the establishment of the National Foundation for Development of Indigenous Nationalities of Nepal, 2002, indigenous nationalities refer to those ethnic groups or community as listed in the annex (of 59 groups) who have their own mother tongue and traditional customs, different