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A memorandum by CA Chair Subash Chandra Nemwang to Prime Minister Madhav Kumar Nepal, UCPN (Maoist) Chairman, UML Chairman and the Nepali Congress President in order to ensure the rights of indigenous peoples in the new constitution

**Dated: 2067 Shrawan 2 (18 July 2010)**

In order to ensure the rights of indigenous peoples in the new constitution, secularism, democratic republic and federalism (as stated in the Interim Constitution of Nepal) should be mentioned as the unchangeable Articles. Commitment should be made to implement the International Protocol 169 ratified by the Government of Nepal (GoN) and UN Declaration on Human Rights of Indigenous Peoples by incorporating them as the fundamental rights of indigenous peoples in the section of fundamental rights of the new constitution by immediately making a timetable. An equitable society with social justice needs to be built by ending the oppression, domination and persecution of indigenous peoples. This memorandum reiterates that there should be a guaranty of proportional representation of indigenous peoples in all bodies and levels of state structure, and the draft constitution with the guaranty of state restructuring on the basis of ethnicity, language and identity/historicism should be distributed to each and every Nepali for consultation. The memorandum also aims to inform that a one-month long protest program (of the first phase) has already been declared to draw the attention of the Constituent Assembly and political parties to promulgate the new constitution before the extended term expires.

Despite the fact that Nepal was called a garden of different species of flowers following the so called unification of the country (with several principalities), however, in reality, it has remained a garden of only one particular species of flower representing one caste group, one language and one religion for 250 years, while all other species of flowers have weathered. The dark history is crystal clear to all of us. Nepal is a multi-caste, multi-language, multi-cultural and multi-religious society and it has made a total of five constitutions (from 2004 to 2047 (1947-1990)) so far to suit to the reigning kings and political parties govern to the country. Ironically, none of the constitutions of tried to internalize the special features of Nepali society. Nor did they make any attempt to address their rights. Even if the Constitution of the Kingdom of Nepal 1990, was considered a democratic constitution, yet it was scrapped within ten years because it failed to address the rights of the multi-ethnic, multi-lingual, multi-cultural and multi-religious people of the country as well as the rights of indigenous peoples, women, minority groups, and highly marginalized and the groups that are on the verge of disappearance. Since that the writing of the new constitution (of a federal, democratic republic) is a golden opportunity to establish the rights of all sections of the Nepali society, the Nepal Federation of Indigenous Nationalities (NEFIN) and the organizations affiliated with it have time and again presented memorandums and written petitions regarding the rights of indigenous peoples to the Constituent Assembly and the political parties represented at the Assembly (from even before the elections to the CA) as well as in the 20-point agreement reached with the Government of Nepal (GoN).

The only alternative to address the aspirations of 30 million Nepalis for a sustainable peace in the country is to end existing class and caste discrimination and persecution while internalizing the existence of a multi-caste, multi-lingual, multi-cultural and a multi-religious society, and promulgate the constitution of a federal, democratic republic of Nepal by ensuring the rights of the indigenous peoples, indigenous women, minority groups, groups that are on the verge of disappearance, highly marginalized groups and the indigenous peoples who are yet to be listed (as indigenous peoples). Nepal is in transition and these are sensitive times. Nepali political parties are, however, more focused on forming and dissolving governments instead of writing the new constitution. This has overshadowed the issues of social justice as raised by the indigenous peoples. If the indigenous peoples are not aware about ensuring their rights in the new constitution by ending the oppression, exploitation and all forms of discriminations (of indigenous peoples) that has continued for over 240 years there is a likelihood that they may lag behind even further in the coming decades and centuries. In view of this reality, the Nepal Federation of Indigenous Nationalities, on the occasion of International Indigenous Peoples' Day 2010, made a decision that there was no alternative to a unified and integrated Adibasi movement to voice their demand.

NEFIN issues a 20-point memorandum to draw the attention of Nepal's political parties to be serious on the historical responsibility of ensuring indigenous peoples' rights by ending their oppression and persecution resulting from a discriminatory policy of the State, and building an equitable society with social justice.

1. Make public the Constituent Assembly (CA) schedule and distribute the preliminary draft of the new constitution with the guaranty of indigenous peoples' rights to all Nepali households at the District, village and ward level.
2. The Defection Act, which was ratified conspiratorially at the CA, should be annulled immediately, and the provision of issuing whip by political parties should be scrapped.
3. Delineate provinces by ensure political preferential right of indigenous peoples with ethnic autonomy on the basis of their ethnicity, and linguistic and historicity (relating to their identity). The proposed provinces of Narayani Sunkoshi and Jadan delineated on the basis of geographic specificity should be scrapped, and it should be restructured according to the ethnicity, language and historicism (relating to their identity) of the indigenous peoples. And, provision be made to delineate and name the province after mutual discussion and consensus among the concerned indigenous peoples. A Commission should be set up consisting of the representatives of NEFIN and concerned experts (belonging to indigenous groups) for technical coordination on the draft approved by the Committee on State Restructuring. The representation of non-indigenous peoples in the Commission will not be acceptable.
4. The points in the draft presented by various CA thematic committees that are against the interests of indigenous peoples should be immediately scrapped, and the opinion put forward by NEFIN on the draft report should be incorporated in the preliminary draft of the constitution.

5. The Acts and laws that are contrary to secularism should be annulled. The practice of celebrating Hindu festival by Nepal Army and Nepal Police by spending millions from the nation's coffers should be immediately stopped.
6. Secularism, ethnic federalism and republicanism should be ensured in the new constitution through unchangeable Articles. Legal provision should be made to take action against those who speak against Secularism, ethnic federalism and republicanism. The disrespectful act of using Hindu priest to promote Hinduism through Hindu religious and cultural activities in Indian Army, British Army, Brunei Armed Forces, Singapore Police, Nepal Army, Nepal Police and Armed Police in Nepal, which also include a sizable number of people from the country's indigenous nationalities, should be immediately stopped. Provision should be made and implemented to allow the soldiers and police from indigenous nationalities to practice religious functions (and cultural activities) according to their own faith.
7. The 20-point agreement reached between NEFIN and GoA should be immediately implemented. Ensure the proportional and inclusive representation of indigenous nationalities in all the bodies and structures of the State.
8. A Commitment should be made in the new constitution to immediately implement the ILO 169 which is ratified by the GoN as well as the UN Declaration on Human Rights of the Indigenous Nationalities by making a schedule.
9. The information material for the national census scheduled to be held in 2011 should be printed in the mother tongue of all ethnic groups and there should be a guaranty of appointing 38 percent of the staff for the census and in the concerned committees (from Central to the village level) from the country's indigenous groups. Provision should be made to ask the questionnaires in the mother tongue used by all indigenous nationalities, and it should be approved by NEFIN.
10. The 3-Year Interim Plan should formulate a clear policy and program for the economic, educational and political development of indigenous nationalities. And the budget should be allocated accordingly.
11. The new constitution should guaranty the right of the concerned indigenous nationalities of prior information on Hydro power development, construction of dams and irrigation development projects and declaration of national parks which directly affect them. It should also guaranty their right to participation and consent in such projects.
12. The lands requisitioned by the State that belonged to indigenous nationalities should be immediately returned. And the practice of constructing Hindu temples and other buildings by encroaching on the historical and religious sites of the indigenous peoples should be immediately stopped. Indigenous peoples' right over land and natural resources should be guaranteed in the new constitution.
13. A provision should be made for the formation of a ministry for indigenous nationalities and a minister should be made from among the indigenous ethnic communities. The judicial demands of the communities who are on the way to be listed as indigenous nationalities should be fulfilled. A provision should be made in the new constitution to provide 50 percent quota to the students belonging to indigenous groups from the

quota set aside for women, youth and students. And arrangement should be made to provide appropriate employment opportunities to the women and youths who belong to indigenous ethnic groups, minority groups, highly marginalized groups and those communities that are on the verge of disappearance. Appropriate arrangements of social security allowance should be made for those who belong to the minority groups, highly marginalized groups and the indigenous groups that are on the verge of disappearance. Provision of free higher education in mother tongue should be made for indigenous ethnic groups with multi-lingual education in universities.

14. If the political parties fail to build consensus, a government should be formed in the leadership of somebody who is from an indigenous ethnic group. There should be a guaranty of 38 percent proportional, inclusive representation of ministers from indigenous ethnic groups in the national unity or majority government.
15. Provision should be made to provide compensation, employment and educational opportunities to the families of those who became martyrs (who belonged to 4indigenous nationalities) in the decade long people's war and the popular movement of 2062/063(2007), and the wounded should be compensated and provided with medical treatment and employment opportunities.

It will not be binding for 15 million indigenous peoples of the country to accept the new constitution if it does not guaranty their rights. The GoN, the members of the Constituent Assembly and the political parties of the county will have to take the responsibility if they create a situation of rebellion and civil war by denying the golden opportunity of the indigenous peoples to get their rights by conspiring to blame their fair demands and protests programs(for their rights to end the 250-long discrimination and persecution) and wrongly defining it as a plot (in the general public) to go against a certain caste group, start civil war and disintegrate the country. If the GoN, CA members and the political parties fail to seriously take the issues stated in this petition NEFIN will be forced to launch Nepal *Bandh* (closure), mass protests and other indefinite protest programs, and the far-reaching consequence of which should be borne by GoN and political parties (as their moral responsibilities).

**Raj Kumar Lekhi**

President, NEFIN

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