

20 March 2015

Ms. Victoria Tauli Corpuz
Special Rapporteur on the rights of indigenous peoples

Mr. Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Ms. Farida Shaheed
Special Rapporteur in the field of cultural rights

Mr. David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Palais des Nations
CH-1211 Geneva 10
Switzerland,

Re: Urgent Communication concerning violations of rights to freedom of religion or belief and cultural rights of indigenous peoples in Nepal

Esteemed Special Rapporteurs,

This joint communication¹ is respectfully submitted for consideration under your mandates.

We request that you examine this communication and correspond with the Government of Nepal (GoN) about the need to reform and repeal Nepal's law against cow-slaughter which are discriminatory against indigenous peoples and inhibit their rights to freedom of religion, to the practice of their spiritual and cultural ceremonies and which—on a larger scale—threaten the secular nature of the Nepali state.

We would like to inform that this communication is in follow up to an appraisal of the issue to the former Special Rapporteur on the rights of indigenous peoples, Prof. James Anaya in 2012, during a consultation at the Expert Mechanism on the Rights of Indigenous Peoples' annual session in Geneva. Following the consultation, the Special Rapporteur communicated with GoN requesting information as to whether any measures would be taken to consult with indigenous peoples regarding necessary legislative reform within the cow-slaughter laws. Despite this communication, as far as the organizations submitting this communication know, there has been no reform of these legal provisions, while the effects of the law have continued and even increased without redress.

Respectfully,



Prabindra Shakya and Amanda Cats-Baril

On behalf of Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) and National Coalition against Racial Discrimination (NCARD)

¹ This communication is jointly submitted by Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) www.lahurnip.org and National Coalition against Racial Discrimination (NCARD) www.ncard.org.np

20 March 2015

Legal prohibition on cow-slaughter in Nepal prevents indigenous peoples from the free practice of their religious and cultural ceremonies and threatens the secularity of the Nepali state

Submitted to the United Nations Special Rapporteurs on: the Rights of Indigenous Peoples; the Promotion and Protection of the Right to Freedom of Opinion and Expression; the Field of Cultural Rights; and the Freedom of Religion or Belief

I. Introduction

1. This communication is respectfully submitted to the above-listed Special Rapporteurs to raise the issue of the continued prosecution of indigenous peoples under Nepal's law against cow-slaughter—a law deeply rooted and wholly justified by Hindu (and therefore non-secular principles) and one which historically has been used to carry out the State's forced cultural assimilation of indigenous peoples and to forge a homogenous identity for Nepali citizens. We raise this complaint namely under article 8 of UNDRIP that states that “indigenous peoples and individuals have the right to not to be subjected to forced assimilation or destruction of their culture.” Further, under Article 1 of UNDRIP and Article 3 of ILO C. 169, indigenous peoples are due the full measure of human rights and fundamental rights promised to all peoples under international human rights law—including the rights to freedom of religion, equality before the law and minority rights to cultural expression as protected respectively in Articles 18, 26 and 27 of ICCPR.

2. Indigenous peoples (*Adivasi Janajati* in the Nepali language) are constitutionally and otherwise recognized as distinct peoples in Nepal.² For instance, Section 2 of the *Foundation for the Development of Indigenous Nationalities Act 2002* recognizes the collective nature of indigenous peoples and defines them as groups with distinct mother tongues, traditions, customs, identities, social structures, and their own oral or written histories. While the schedule to this law lists 59 indigenous peoples, indigenous organisations observe that a considerable number of indigenous peoples are not recognised and included in the schedule, thus rendering them invisible in the eyes of the law.³ Similarly, although Nepal's 2011 census states that indigenous peoples comprise 35.81 percent of the national population of 26.5 million people, indigenous organizations assert that indigenous peoples exceed 50 percent of the population.

3. Nepal ratified International Labour Organisation Convention No. 169 (“ILO C. 169”) in 2007; the convention entered into force in September 2008. Nepal also affirmatively supported the adoption of the 2007 UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”). Nepal is party to the International Covenant on Civil and Political Rights (“ICCPR”) and the International Convention to Eliminate All Forms of Racial Discrimination (“ICERD”). These instruments, however, remain largely unimplemented in domestic law and practice.

² See Articles 21 and 33.d of 2007 Interim Constitution.

³ See also E/C.12/NPL/CO/2, Para 28, whereby the Committee on Economic, Social and Cultural Rights has expressed concern “about the criteria used by the National Foundation for Development of Indigenous Nationalities to recognize officially indigenous nationalities and about the implications of official recognition”.

II. The Prohibition on Cow Slaughter in Nepal

A. Consolidation of Nepal as a True *Hindustan*: Origins of the Prohibition on Cow-Slaughter

4. Although Nepal was never colonized by an external power, indigenous peoples and other caste groups in the country were consistently subjected to a strong program of forced cultural assimilation at the behest of the Hindu political and economic elite in the country. Throughout Nepal's history, beginning with the unification of the Nepali state 250 years ago, the Gorkha royalty had a strict agenda to create a homogenous Hindu Kingdom in Nepal and to consolidate their rule over the populations of remote areas of Nepal—areas which bordered on neighboring political and geographical superpowers, India and China. As the Special Rapporteur on Indigenous Peoples, James Anaya noted after his visit to the country in 2009, “the unification of these diverse groups into a single State was achieved at the expense of political and cultural plurality.”⁴

5. Nepal long prided itself on its reputation as the “true” Hindustan. This reputation depended on an image of Nepal as a homogenous Hindu state; indeed, Nepal was considered to be more true a Hindustan than India precisely because it was not populated with Muslims and other “non-believers.”⁵ Maintaining the purity of the Hindu Kingdom was important for the leaders of Nepal who could not “tolerate the customary law of a country that defiled the realm over which [they] ruled.” Maintaining such purity was, from the beginning, deeply tied to protecting cows throughout Nepal and preventing cow slaughter and beef-eating (common practices amongst many communities especially those in the Eastern Himalayas) which were seen to be practices which defiled the Kingdom.⁶ According to Hindu mythology, the original King of Gorkha, Dravya Shah, was able to take power in 1559 because he protected cows; there is a belief that the goddess Laxmi resides in every cow and that so long as Nepalese rulers were “cow-protectors” no one, including the British, would be able to hurt the nation. Cow-protection was also an important symbol for Rana rulers who sought to legitimize themselves before Brahmans. As such from the earliest history of the country, the ideology of the “State” of Nepal has been practically identified with a ban on cow-slaughter.

6. The first Civil Code of Nepal, the Muluki Ain of 1854 stated: “This kingdom is the only kingdom in the world where cows, women, and Brahmans may not be killed”—trumpeting Nepal as the purest Hindu Kingdom and simultaneously signaling to Nepalese citizens that Hindu religious creeds were to be the law of the land. The purpose of the Muluki Ain was to “establish a common caste hierarchy and a homogenous legislation, not an easy task in the heterogeneous kingdom of Nepal. [Jang Bhadur Rana] most certainly wanted by this first national law to control remote areas and ethnic groups.”⁷ In order to eradicate perceived “impurities” of cultural practices around the nation and to maintain the reputation of Nepal as the true Hindustan, classical *dharma* ideals were codified into law and then used to erode and destroy *desadharma* (local customs).⁸ Nepal's national language (*Khas* Nepali, descendant from Sanskrit), dress and, significantly, animal—the Cow—all adhere to the image of the pure Hindu Kingdom that the Nepali elite exported and profited from.⁹

7. Indeed, the legal Hinduization of Nepal did more than give its leaders a certain religious prestige; it also served as an important tool in consolidating the nation.¹⁰ For example, in the 1870s, the slaughter

⁴ Anaya report, Para 7, A/HRC/12/34/Add.3, 20 July 2009

⁵ The King and The Cow

⁶ Burghart, 1984 (110), quoted in the King and the Cow

⁷ King and the Cow

⁸ Wezler 1985 (81)

⁹ “Visible symbols always played a crucial role in the process of Hinduization. I agree with A.W. Macdonald and Anne Vergati Stahl that “Nepal was hinduized not by displaying and informing but by looking and listening, rather than by the dissemination and reception of written messages” (79)

¹⁰ The King and the Cow

of Yaks was also prohibited by law—from all accounts, the reason for this ban has been discerned as being that “the Bhotiya people of the border areas needed to be brought within the *moral kingdom* of Nepal, at least symbolically, and thereby marked as subjects of Gorkha, not of Tibet.”¹¹ Additionally, there are Shah royal orders dated from the 1600s which called for the coercive confiscation of land and territories for the creation of cow pastures as it was “the King’s duty [to protect the cow], otherwise he would incur guilt (*pratyavaya*).”¹² The first Royal Order officially prohibiting cow-slaughter (Rana Bhadur Shah, 1805) stated that the punishments for the crime were death and the confiscation of all of the offender’s property. The codification of Hindu ideals, and most especially the ban on cow slaughter, was therefore “used as a means of promoting national integration and sovereignty over various ethnic groups and remote areas.”¹³

8. Importantly, the prohibition on cow-slaughter was always monitored from the center in Nepal and was therefore often used as a tool for showing the strength of centralization in the nation. When local administration failed to punish people for cow-slaughter the King would issue a Royal Order demanding severe punishments of the individual offenders¹⁴—in this way the royal power at the center was able to show that they could exercise their strength in all corners of Nepal. Such orders often violated the fundamental rights of offenders—for example, a Royal Order from 1810 stated, “Persons who commit the heinous crime of slaughtering oxen in Hindu land shall be flayed alive, impaled or hanged upside down until they are dead. Their property shall be confiscated and members of their family enslaved.” In this way, cow-slaughter cases perpetuated bonded labor, slavery and subordination in Nepal and also provided the means for the Hindu elite to consolidate property and territories.

B. Cow Slaughter Prohibition as a tool of Forced Cultural Assimilation

9. As observed by one scholar “the injunction [against cow-slaughter] of the Muluki Ain is therefore mainly to protect the life and holiness of the cow for the sake of the King’s Hindu orthodoxy and for the sake of a *common* state ideology.”¹⁵ The Muluki Ain assigned each member and ethnic/caste group in Nepal a position in a caste hierarchy, which determined each individual’s economic and political rights.¹⁶ As demonstrated above, the prohibition on cow-slaughter served as a cornerstone of the promulgation of Nepal as a Hindu monarchy. A process which was solidified in the 1962 constitution which “declared Nepal as a Hindu State, thereby perpetuating the religious, linguistic and cultural homogenization of the country’s identity.”¹⁷ During his unification campaigns, King Mahendra made analogies likening the citizens of Nepal to “all the devotees of Vishnu have an identical subtle substance that unites them within the subtle body of Vishnu in the form of Parbrahma”¹⁸ Nepal’s strength as a nation was hereby strongly linked to the idea that the nation was a unitary body of peoples united under a belief in Hinduism.

10. Despite its promulgation of the Hindustan identity, Nepal was never such a homogenous country—today, 59 castes/ethnic groups are recognized in the country and many do not identify as Hindu. Nonetheless, they have been forced to abandon certain of their own cultural and religious practices to live in accordance with Hindu maxims that are codified in Nepali law in direct violation of international law, which forbids the forced assimilation of indigenous peoples into hegemonic cultural

¹¹ King and the Cow

¹² *Id.*

¹³ The King and the Cow

¹⁴ See, e.g., The Royal Order to Bichari Hiranda Tiwari” March 1806, issues when local administration had failed to punish a low-caste Damai for cow-slaughter in the Far West of Nepal: “Cut off flesh from his back, and put salt and condensed citrus juice on the wounds. Make him eat the flesh himself and kill him.”

¹⁵ King and the Cow 91

¹⁶ Anne de Sales, The Kham Magar country in *Understanding the Maoist Movement in Nepal*

¹⁷ Supra note 3

¹⁸ The Kham Magar country, Supra note 15

identities.¹⁹ Peoples' desires to be free of this yoked identity led to the social movements which changed Nepal in the 1990s and led to the declaration of a secular state and a transition towards democracy in the early 2000s. The transition towards democracy and secularism are still ongoing in Nepal and the transition cannot be complete until the laws, which have been used to preserve the Hindu hegemony in the state, are reformed.

11. Even as the punishments for cow-slaughter have become less extreme over time²⁰, a 1990 amendment to the Civil Code still made cow-slaughter punishable by 12 years in prison and this law—like its predecessors—has been consistently and discriminately used against the indigenous peoples of Nepal. In 2012, the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) conducted research on all the cow slaughter cases in Nepali courts and has continued to monitor and provide legal assistance in such cases. In a discriminatory number (over 90 percent) of the cases, the defendant is a member of an indigenous community; furthermore, each of the pleaders, police personnel and judges responsible for the cases are Hindus, and for the most part high-caste Hindus (Brahmin or Chhetri). These cases will be discussed in more detail below.

12. Notably, many indigenous peoples in Nepal eat beef (such as, the Tamang and Bhote whose name actually derives from a derogatory reference to beef-eating Buddhists²¹, among others) although some communities have given up the practice on account of the strict punishments they faced (such as, the Gurung²²)—the fear of enslavement of themselves and their family and the confiscation of their property. These communities should not be forced to adhere to the Hindu dietary restrictions that are antithetical to their traditional practices and the law prohibiting cow slaughter should therefore be repealed in line with Article 8(d) of UNDRIP which requires States to provide effective redress for any form of “forced assimilation or integration.” For other indigenous peoples, the prohibition on cow slaughter inhibits their ceremonial traditions in violation of Article 18 of ICCPR on freedom of religion and articles 9, 11 and 12 of UNDRIP which collectively ensure indigenous peoples' right to maintain, strengthen and manifest their cultural and religious customs. One example of a community practice, which is threatened by the prohibition on cow slaughter, is the Kulung's Tosh Seel ceremony. The Kulung believe that 22 generations ago, when there was a major drought, a strong member of their community, Dhanamukh, killed a bull that bellowed as it died. This bellow reverberated such that rain began to fall and the drought ended. Since, the Kulungs annually sacrificed one bull for a good harvest but under the Hindu monarchy, they were forbidden from continuing this practice.²³

C. Discriminatory Implementation of the Current Prohibition on Cow Slaughter

12. As noted above, LAHURNIP carried out a study on the current cow slaughter cases in courts around Nepal in 2012. Based on the study and continued monitoring that followed, it became apparent that the cow slaughter prohibition continues to be used discriminately against the indigenous peoples of the country at the expense of their ability to continue in their cultural practices. The HRC noted in their General Comment 22 on Article 18, that the limitations permitted on freedom of religion in part (3) are only permitted to the protect public safety, order, health or morals, or the fundamental rights and freedoms of others. It is quite obvious that the prohibition on cow slaughter is not justified by any of these categorically permissible limitations but rather is in place to protect the special place of Hindu beliefs in Nepali society. This is not permissible as the Committee also observed that, in relation to the

¹⁹ UNDRIP Art. 8

²⁰ With the promulgation of the Muluki Ain in 1854, capital punishment for cow-slaughter was reduced to life imprisonment.

²¹ Ben Campbell, *The Heavy Loads of Tamang Identity*, NATIONALISM AND ETHNICITY IN NEPAL P. 216.

²² John Whelpton, *Political Identity in Nepal: State, Nation and Community*, NATIONALISM AND ETHNICITY IN NEPAL P. 43

²³ Bagaman Kulung, interview with Ratna Bahadur Kulung Tosh Nokchho (leader of village for tosh worship in Kulung Community)

restrictions placed on the freedom of religion, based on the concept of public morals, the morals used as a basis must “not [be derived] exclusively from a single tradition.”

13. Furthermore, in Comment 22, the HRC goes on to say that restrictions must be applied in a way, which adheres to ICCPR’s article 26 on equality before the law and article 2 on anti-discrimination. As such, “restrictions may not be imposed for discriminatory purposes or applied a discriminatory manner.” The fact that every case filed under the prohibition on cow slaughter is filed against an indigenous person evidences that this particular restriction on a religious practice is indeed applied in a discriminatory manner. In Kathmandu District Court, there were 5 cow slaughter cases in 2012. The most recent case, from June of 2011, resulted in the detention of then General Secretary of Nepal Federation of Indigenous Nationalities (NEFIN), the umbrella body of indigenous peoples’ organizations of the country, who went to the jailhouse to criticize the detention of four indigenous persons on the charge of cow slaughter.²⁴ The defendants in the case had been held in prison for over a year without being charged as no eyewitness was found to testify that they actually were responsible for the death of the cow.²⁵

14. In Lalitpur District Court, one case was filed under the prohibition on cow slaughter in 2012. The defendants in this case are members of Bhote and Tamang communities. The District Attorney pushed for a 12-year sentence in the case although the two defendants and their lawyers claim the cow was already dead when the defendants cut meat from the carcass.²⁶ This case resulted in protests around Lalitpur and in the destruction of the houses and property of the defendants accused of cow slaughter while the two remained in custody awaiting trial at the year’s end.²⁷ The defendants in this case, like those in many others around the country, say that they and their ancestors have long ingested cow meat.²⁸ There were also 5 cases under cow slaughter on record in the Lalitpur District Court by 2012; in each of these cases, the defendants are from Tamang communities.

15. Large number of cow slaughter cases have been reported and documented from around Nepal, particularly from the eastern region of the country.²⁹ Nine Tamang men and one Brahmin were arrested for offences of cow slaughter in Panchthar district in July 2012. The men claim that the calf fell of a cliff to death and they were merely skinned it to use the hide, for making their musical instruments (i.e. hand drum), as per the traditions of many indigenous communities of Nepal. They then shared the meat. They remain in custody undergoing trial. In the same district, seven men (of Gurung, Rai and Limbu communities), including a Brahmin man, and five men (of Limbu and Newar communities) were arrested in January and June 2013 for the same offence in similar circumstances and are also in custody undergoing trial.

16. In June 2013, three men (of Limbu and Tamang communities) were arrested in Jhapa district on charges of cow slaughter after they allegedly killed, or helped to, an ox that belonged to one of them. Gau Bansha Sanrakchhan Manch (roughly translated as Forum for Protection of Cow Dynasty), a local affiliate organization of Brahmin Samaj, a national-level Hindu fundamentalist organization of Brahmin caste group, filled the complaint against the men.³⁰ The police verbally and physically abused the family

²⁴ See <http://www.ekantipur.com/2011/06/26/top-story/cow-slaughter-scandal-nefin-gen-secy-sherpa-held/336333.html>

²⁵ Case no. 2307, Pleader: Nepal Police, Dipak Thapa, Defendants: Chandra Bahadur Burdathoki (Sindhuli, Jhala, Indra Bahadur Tamang (both indigenous) Attorney General Padam Prasad Acharya (Brahmin Chhetri)

²⁶ Krishna Hari Thapa (pleader, government) vs. Cheddar Bhote, Lal Bahadur Tamang (defendants), Incident 25th March 2012, evening at 9:30 at Lalitpur Godam chaur

²⁷ See <http://www.ekantipur.com/2012/03/26/capital/lalitpur-tense-over-cow-slaughter-scandal/351246.html>. Also, see US Department of State, Nepal 2012 International Religious Freedom Report,

<http://www.state.gov/j/drl/rls/irf/2012religiousfreedom/index.htm?year=2012&dliid=208436#wrapper>

²⁸ See, e.g., <http://www.ekantipur.com/2010/05/05/capital/around-a-dozen-cow-slaughterers-detained/313693.html>

²⁹ A preliminary draft list is available at <https://indigenoussissuesinasia.wordpress.com/2013/12/16/527/#more-527>

³⁰ Number of Hindu fundamentalist organizations is on the rise in Nepal, which opposes cow slaughtering and secularism as a whole. See *Cultural and religious discrimination still persist in a democratic and secular Nepal* at <http://www.indigenousvoice.com/cultural-and-religious-discrimination-still-persist-in-a-democratic-and-secular-nepal.html#sthash.Ybfs5c0e.dpuf>, 7 December 2014

members of the defendants during the house searches and arrest of the accused. Afterwards, local Brahmins also disgraced the families. . The three accused remain in custody undergoing trial. In the same district, the same month, four other Limbu men were arrested on cow slaughter charges for allegedly killing an ox of a local Brahmin; verbal abuses and threats were also involved in the arrest. The four have been released, after paying bail of NPR 22,000 (approx. 220 USD) and their charges were reduced to public offences while they await court hearings. Two other Limbu men were arrested in June 2014 in the same district at the complaint of the same organization on charges of cow slaughter; these men have reportedly been severely tortured in police custody and are awaiting trial.

17. In July 2013, the Ilam District Court sentenced six indigenous persons (from Limbu, Tamang and Newar communities) arrested in November 2012 to six years in prison each for eating cow meat. The defendants had said they did not kill the cow, but that it died after falling off a cliff.³¹ In May 2013, Inspector Hari Khatiwada (Hindu Brahmin) of Jhapa District Police Office arrested local hotel owner Harka Yonghang and another local Kul Bahadur Lawoti – both members of the Limbu community – on charges of killing a cow and selling the meat. Following massive community pressure, Lawoti was released after two days in detention while Yonghang was charged for public offences that involve less severe penalties. He posted bail of NPR 10,000 (approx. 100 USD) and has now been released.

18. In March 2014, three men (of Sherpa and Rai communities) were arrested on charges of cow slaughter in Dhankuta district. They were taken from the house of one of the defendants, where they were celebrating Lunar New Year, which many indigenous communities in Nepal observe. This resulted in immediate protests by local NEFIN councils, indigenous peoples and other civil society organizations, including journalists. Following talks, the police agreed to release two Sherpa men but not the Rai individual. The protests continued until they were all released.³² A lawmaker from one of the regional political parties led by indigenous persons had also raised the issue in Nepal's Legislature-Parliament calling for necessary legislative reform, but no action was taken.³³

19. In May 2014, Tara Bahadur Rai was arrested in Illam district for killing a cow and a calf under intoxication of alcohol. Despite confession and offer to pay necessary damages, he remains in custody undergoing trial. In September 2014, four Tamang men were also arrested in Khotang district.³⁴

20. A significant number of cow slaughter cases has also been reported from other parts of Nepal. Two men (Thami and Tamang) were arrested from in Dolakha in central Nepal.³⁵ Four Tamang men were arrested for cow slaughter in Sindhupalchowk district in January 2014³⁶ and a Sherpa man was arrested in May 2014 in Ramechhap district³⁷. Also, in Sindhupalchowk district, in June 2014, three men (of Pahari and Tamang communities) were arrested on charges of cow slaughter.³⁸ Most of those trials are underway.

³¹ See US Department of State, Nepal 2013 International Religious Freedom Report, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2013&dliid=222337#wrapper>. Originally, published in *Khas Nepali* on LAHURNIP website at <http://www.lahurnip.org/details.php?id=153#.UeKPv9I3AZw>

³² See Online Khabar, 1 March 2014 [original link <http://www.onlinekhabar.com/2014/03/172199/#sthash.CyuHN2jZ.dpuf> inactive], reposted at the link http://hamroraptidangnews.blogspot.com/2014/03/blog-post_7722.html [link in *Khas Nepali*]

³³ See Online Khabar, 2 March 2014 [original link <http://www.onlinekhabar.com/2014/03/172445/#sthash.qAYaqgBQ.dpuf> inactive], reposted at the link http://updatekhabar.blogspot.com/2014/03/blog-post_9927.html [link in *Khas Nepali*]

³⁴ See <http://www.miterijapan.com/content/1207> [link in *Khas Nepali*]

³⁵ See <http://www.ekantipur.com/np/2070/4/24/full-story/373597.html> [link in *Khas Nepali*]

³⁶ See <http://rajasatta.com/updated-news/6127-2014-01-04-01-22-40> and <http://www.panchpokharinews.com/general-news/1167> [link in *Khas Nepali*]

³⁷ See <http://m.ujyaaloonline.com/news/32366/One-arrested/> [link in *Khas Nepali*]

³⁸ See <http://www.ratopati.com/2014/06/10/136104.html> [link in *Khas Nepali*]

21. In Lamjung district in western Nepal, two Tamang men were arrested on charges of cow slaughter in August 2012, along with two children who were later released.³⁹ In Nawalparasi district, three Magar men were arrested in June 2014 on charges of cow slaughter. A local political leader belonging to Brahmin community from UML – Nepal’s second largest party had taken the main accused taken to the police. Like in many cases above, the three claim to have eaten the meat of a calf that died by falling off a cliff, which they say is their traditional practice. They even said they did not know about the law. One of them had recently returned from Malaysia. In December 2014, a Magar man was sentenced to 12 years in prison for the offences of cow slaughter in Dang district.⁴⁰

22. The above cases are merely representative; there are many other cases currently ongoing, as well as historic cases of persecution of indigenous peoples under cow slaughter provisions. Such a distinct pattern in the identity of defendants charged under a single law suggests that the prohibition on cow slaughter is without question enforced in a discriminatory manner.⁴¹ Indigenous peoples are not free to practice their rituals but are rather legally coerced to abide by Hindu precepts. As noted above, this violates the UN Declaration on the Rights of Indigenous Peoples as well as the International Covenant on Civil and Political Rights; furthermore, it violates Nepal’s own recent commitment to transitioning from a Hindu monarchy into a secular, democratic republic.

23. In addition to the unjust use of the law, it should be further noted that, in almost all the cases, the defendants or those sentenced are primary breadwinners of their families. As a result, the families, which are mostly already in poor economic conditions, have been left in worse situation after the cow slaughter incidents, including being in debt for bail amounts that had to be paid. At the same time, the arrests, accompanied by physical and verbal abuse, as well as following the legal consequences suffered by indigenous persons have instilled fear among broader indigenous communities to freely practice their religious and cultural customs and traditions.

D. Cow Slaughter Prohibition as a violation of Nepal’s Secularity

16. This appeal to the international community is made namely because attempts to challenge the validity of the current cow slaughter prohibition in domestic courts have failed. Following the Second Peoples Movement in April 2006, an interim constitution was promulgated in Nepal, which committed the nation to becoming secular and democratic. In the context of this communication, the commitment to secularism is of the utmost importance. The preamble of the interim constitution—which in the wake of the failure to promulgate a new constitution in 2012, remains in force in the country—reads: “the State is to be secular, no longer a Hindu kingdom.” Article 4 of the Interim Constitution states in part 1: “Nepal is an independent, indivisible, sovereign, *secular*, inclusive and fully democratic State.”

17. A law such as the Civil Code’s prohibition on cow slaughter represents a clear violation of this domestic commitment to secularity, however when the prohibition was challenged on such grounds in front of the Supreme Court of Nepal, the Court upheld the prohibition. In *Advocate Om Prakash Aryal vs. Nepal Government et. Al*, decided on 4 September 2008, a special bench of the Supreme Court held that: “the Cow is not only the symbol of the Hindu religion but also the national animal, as stipulated in the

³⁹ See http://udipurLamjung.blogspot.com/2012/08/blog-post_457.html [link in *Khas Nepali*]

⁴⁰ See <http://sherpakhabar.com/index.php?action=news&id=2795> [link in *Khas Nepali*]

⁴¹ It should be noted that there are a very few number of cases in Nepal where non-indigenous peoples are listed as defendants: In August 2012, three Dalit men were sentenced to 12 years in prison in a cow slaughter case in Parbat district in western Nepal. In February 2013, two Muslims were arrested in Morang district in eastern Nepal. In July 2013, three Chhetri and two Brahmin men were arrested in Syangja district in western Nepal for allegedly stealing and killing an ox of a local Brahmin for consumption of beef, which is the only case that involved so-called high caste Hindu people as defendants. This being recognized, the law is still very clearly used in discriminatory and disproportionate measure against indigenous communities in Nepal.

present Interim Constitution which encapsulates secularism. So if the State declares crime against such animals, this does not contradict with the constitution and fundamental rights, or with secularism.”⁴² This argument is legally hollow, especially given the deep history of the prohibition on cow slaughter—its tie to the Hindu identity of Nepal and its use as a tool of forced cultural assimilation against the indigenous peoples of the nation.

18. On 4 September 2014, the Supreme Court dismissed another writ petition filed requesting the legal repeal of the entire Chapter on the Quadruped of the Muluki Ain. Though the petition presented the context of increasing communal tensions in recent times due to prohibition on cow slaughter, the Supreme Court ordered dismissal of the petition on the grounds that the Special Bench had already decided on the issue. Of particular concern is that the order issued by the single bench of Honorable Justice Govinda Kumar Upadhyaya states that: “despite the legal provision of the existing Chapter on the Quadruped, all Nepalese including Hindus and non-Hindus have lived heartily as flowers of a single garden; in such situation, an order as demanded in the petition is highly likely to devastate the feelings of Hindu community. Also as Court is not the place to resolve such issue but the Legislature-Parliament, the writ petition was not seen to be eligible at the first sight.”⁴³

19. The Legislature-Parliament of Nepal is currently reforming the civil and criminal code in Nepal. Under offences relating to the quadruped, according to sources who have seen the drafted reforms, will persist, though the penalty for killing a cow/ox has been decreased to 3 years’ imprisonment. The draft law proposes 6 months’ imprisonment as a penalty for debilitating a cow/ox and NPR 50,000 (500 USD) fine for other hurtful actions. While lawmakers representing political parties supportive to the issues of indigenous peoples and other religious minorities have argued for repealing the legal prohibition on cow slaughter in its entirety, the Legislature-Parliament, dominated by traditional parties of Nepal controlled by conservative Hindu Brahmin leaders, is highly unlikely to do so.

18. As interpreted by the HRC in Comment 22, the justification given for the law by the Special Bench and upheld by the recent Court order cannot be upheld. Restrictions on religious freedom permitted by article 18(3) must only exist to protect public safety, order, health or morals or the fundamental rights and freedoms of others. The prohibition on cow slaughter—whether the cow is a national animal or not—does not fit within these permissible categories.

III. Conclusion & Requests of Special Rapporteurs

19. On behalf of the indigenous peoples of Nepal and other non-Hindu citizens of the nation, LAHURNIP and NCARD request that the Special Rapporteurs take the information provided under their consideration. As domestic attempts to challenge the prohibition on cow slaughter have been unsuccessful, it is necessary that international experts unite in condemning this law as a hangover from the time when Nepal was a Hindu kingdom. As has been expressed in this communication, the law as it stands violates a number of treaties to which Nepal is party. Thus, it is recommended that the Special Rapporteurs communicate with the Government of Nepal—particularly with the Legislature-Parliament—to repeal the provisions that criminalize cow slaughter so as to guarantee religious freedom and cultural rights to Nepal’s indigenous peoples. The submitting organizations also request the Special Rapporteurs to request urgent action to redress the harms suffered by those that have been affected by the law till date.

⁴² Nepal Kanoon Patrika (Law Magazine), 2065 Decision 7999

⁴³ See Takum Prasad Gharti vs. Government of Nepal, 071-ws-0001, Supreme Court of Nepal.
<http://nepalindigenoussues.blogspot.com/2015/02/blog-post.html> [link in *Khas* Nepali]