

Hydropower Development and Right to Free, Prior and Informed Consent (FPIC) of Indigenous Peoples

Study Report on Likhu-4 Hydropower Project and Koĩts Indigenous Peoples' Rights, Nepal

Study conducted by Sunuwar Welfare Society (SWS) and Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) in coordination with Asia Indigenous Peoples Pact (AIPP) Foundation



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Tanka Ram Sunuwar
President
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ACRONYMS

SWS:	Sunuwar Welfare Society
SWSLSC:	Sunuwar Welfare Society Struggle Committee
LAHURNIP:	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
AIPP:	Asia Indigenous Peoples Pact Foundation
VDC:	Village Development Committee
DDC:	District Development Committee
NFDIN:	National Foundation of Indigenous Nationalities

1

Introduction

The Koïts (Sunuwar) are one of the 59 indigenous peoples listed under the Nepal government's NFDIN schedule, who inhabit the eastern part of Nepal, alongside the Liku (Likhu), Ngãku (Sunkoshi), Subuku (Tamakoshi) Rivers and their other branches Khimku (Khimti), Yolung, Molung, and Solung. Its source – in the Rolwaling Himalayan range – flows to the south.

Importantly, Sunuwar Indigenous Peoples call themselves as Koïts in their mother tongue and are proud to identify themselves as 'KirantKoïts'. Others call them Sunuwar, Mukhiya/Mukhia, Sikari, etc. They have over 70 sub-clans and their language is called 'Koïts Lo'. The traditional religion of this community is called Kirat-Dharma (Kirat Religion), while the religious philosophy is called 'Mukdum'. Only 26,611 Koïts of their total population of 95,254 can speak the mother tongue in this community (CBS 2001).

Map of ancestral lands of Indigenous Koïts



Koits' ancestral territory was officially recognized in the past under their communal ownership system known as Kipat. It was very similar to Limbus' Kipat in terms of de-jure and de-facto ownership, but different in that Limbus exercised this rights in accordance with the Treaty of 1931 (BS), which granted permanent sovereignty over lands territories and natural resources to Limbus. The Kipat lands were abolished with the promulgation of Land Reform Act of 1964. When the State imposed the hierarchical Hindu caste policy of assimilations, Koits were compelled to surrender some of their Kipat lands for the use of Hindu priests.

1.1 Organizations of Indigenous Koits

The Koits Chuplu is the traditional organization that exists on the basis of collective leadership and prevails among the 12 Kipat and 16 Thum. It is an autonomous institution of Koits' traditional governance in Nepal. The Sunuwar Welfare Society (SWS), the Koits' representative organization established in 1988 under the state Registration Act-2034, has been the only organization representing and working for the welfare of the Koits community to date. The Koits community has neither representation in nor access to the policy-making and implementation levels of the state and state bodies.

1.2 Natural Resources

The Koits have long nurtured the lands and forests with the water and mineral resources within their ancestral territory. Some of these are:

- a) Waters: The main rivers - Subuku (Tamakoshi), Ngāku (Sunkoshi), Liku (Likhu) and their branches, Khimku (Khimti), Yolung, Molung and Solung - that flow through the areas of Kipot are considered the main water resources and the Koits have long been dependent on these rivers for fishing, irrigation, and agriculture or cultivation of crops, among others. Besides these rivers, there are a number of glacial lakes; Sidi Maïli (Panch Pokhari, Bhut Pokhari, Bhale and Pothi Pokhari, Jata Pokhari) and other water sources like small creeks and streams in the area. However, the Likhu is the main river that the local inhabitants have long depended on. Surveys for hydropower have been carried out on almost all of these rivers and the Khimti has been capacitated and installed with 59-megawatts hydropower dam.

- b) Forests: In the Koïts territory, the dense forests found alongside the river and on the higher slopes of mountains are rich in biodiversity. A variety of trees such as cotton, pine and robust shoe (to name a few) are found there and are used only for traditional purposes, e.g., housing, cowsheds and firewood.
- c) Mines: Among the existing mines in the Koïts territory, the iron mine situated at Thoshe in Ramechhap district is the most famous. It is believed that iron used for making guns during the Second World War was from these mines. Besides this, there are also salt, crystal, slate and copper mines in the area.
- d) Lands: Plains and flat lands are rarely found in the Koïts territory; therefore, the people practice settled agriculture, mostly farming on the sloped and terraced fields along hillsides. The main crops are maize, buckwheat, millet, rye, wheat and potatoes that are especially cultivated alongside the rivers.

2

The Present State of the Likhu-4 Hydropower Project

The preliminary surveys (in the main for Likhu 1, 2, 3, 4 and 5 hydropower projects) have already been conducted. According to the locals and the Koits, the land for the Likhu 3 and 5 Projects have already been purchased in the name of one person. The land purchase in an individual's name circumvents the requirement for a detailed survey that would have allowed the local people to be involved. Subsequently, almost all of the preparatory work for the Likhu-4 hydropower projects has already been completed, such as setting up of site offices at Sirise and Saipu, land appropriation and construction of model buildings in the project area. The construction of some two-kilometers of road to link up with the canal is soon to be completed.

This study was undertaken in light of the following developments in the Likhu-4 project-affected areas:

1. Construction of access roads
2. Potential to augment electricity in rural areas already with electrification
3. Indigenous peoples and local people in the project site are not aware of their rights with respect to the project due to the remoteness of the site
4. Lack of influential indigenous leaders in every level of decision making
5. High current of river generates high power while there is profit in low investment

Reaching the remote communities that will be affected requires crossing log bridges



Green Venture Pvt. Ltd, a national private company whose office is located in Putali Sadak, Kathmandu, is the project-holder company and indirectly operated by an Indian multinational company but this is not reflected in the Environment Impact Assessment (EIA). Currently, Nepal's Triveni Group and an Indian company, Vilver Energy, are jointly involved in the project. The aforementioned organizations are responsible for conducting the project study with the permission of the Nepali government, its Energy Ministry and Division of Electricity Development. The Permission Letter No. 200 dated Jan. 3, 2006 authorized the conduct of an overall study of the Likhu-4 Hydropower project. According to the project document, the project aims to produce 506 megawatts of electricity at the cost of 10 billion Nepali Rupees.

There are also plans to set up a 51-meter high wall stretching across Khiji-1 to retain tunnel and to build a 4.025-kilometer tunnel for the construction of the dam in the forest. The tunnel stretches along Bēber and Bhuji-5, Putheru, Paitharp, Bokipatdim and Lon, so that they would be able to have a 60 cubic meter current flow of water per second, streaming from 244.72 meters to generate the expected electricity . This is considered to be one of the cheapest methods of generating electricity.

Despite the completion of the preliminary project study in 1995, the detailed Project Report only came out in 2008 and the public hearing for environmental assessment was conducted on Oct. 26, 2009. There was protest from the affected residents and concerned indigenous Koits in the area because the report and overall design of the project were completed and launched in their area without prior consultation with them.

Following strong local opposition to the project, the Ministry of Science and Environment issued a 35-day public notice for claims and counter-claims on the project. There was political pressure on the Village Development Committee (VDC) office because it approved the social and environmental assessments without any consultation at all with the locals and concerned Koits community. It must be noted that there is no relationship between Green Venture, which is preparing documents that ignore the rights of Koits with the support of political leaders in the Central Government, and the VDC that is the government agency mandated to govern at the local level.

The VDC's role is to organise village people structurally at a local level and create a partnership between the community and the public sector for improved service delivery system. A VDC has a status as an autonomous institution and authority for interacting with the more centralised institutions of governance in Nepal. In doing so, the VDC gives villagers an element of control and responsibility in development, and also ensures proper utilization and distribution of state funds and a greater interaction between government officials, NGOs and agencies.

Even though the VDCs are autonomous governmental bodies responsible for administrative, legal and developmental affairs, it cannot work in favour of the people due to the centralized political system and lacuna of representatives in the VDC due to the conflict. Thus a secretary with a technician runs the VDC and most of the secretaries are displaced to towns due to the ten year conflict that was initiated by Communist Party Maoists. So displaced secretaries who are stationed in town rather in their respective VDCs granted the verification certificate of EIA. Because of the undue influence of political leaders at the centre, nobody attempted to speak against the Likhu-4 Project even though they have many things to say.

The people were not notified about how long the project had been in operation. Similarly, the Ministry of Water Resources issued no notice to

the public and to which company it gave the approval for the project. The people do not have access to newspapers and although there is access to radio, locals do not have the habit of listening to the radio for information, thus they were unaware of developments. They said that the only source of information is through Koits Chuplu and SWS.

On Aug. 23, 2009, the SWS and KoitsChuplu, in coordination with LAHURNIP, conducted an interaction programme to assess the Likhu-4 Hydropower project based on ILO Convention 169 in Hotel Ashoka in Bagbazar, Kathmandu. Shanker Limbu and Dinesh Ghale from LAHURNIP facilitated the programme with Mukunda Neupane and Bijaya Karki representing the hydropower project. The body prepared a letter of attention and handed it over to Green Venture Pvt. Ltd. In the meeting, the SWS revealed that the authorities concerned repeatedly refused to arrange appointments or meetings with them so that they could get detailed information regarding the project, despite several visits to the project office concerned.

The SWS formed a task force to study status of the area in detail when it became apparent that the procedures of the project violated the rights of indigenous Koits. The task force also sought information from the Division of Electricity Development under the Ministry of Water Resources and from the office of Green Venture Pvt. Ltd in Putalisadak, Kathmandu. To date, no response to these requests has been received.

Despite all these notices, the Likhu-4 Hydropower project implementation continued without any consultation or clarification from the implementing agency. To address this, the SWS organized a two-day orientation programme on ILO Convention 169, at Saipu VDC in Ramechhap on Jan. 3-4, 2010 with all the indigenous Koits in the area. They formed the SWS Likhu Struggle Committee to take the lead in the continuing protests. Furthermore, the Committee submitted a report on this case to the UN Special Rapporteur on Indigenous Peoples' Human Rights, James Anaya.

2.1 Objectives of the study:

The objectives of the study are:

- 1) To prepare a report to inform rights holders, duty bearers and other stakeholders about the Likhu-4 projects and its impacts;

- 2) To establish how the rights of indigenous Koits are violated in the entire process of the Likhu-4 hydropower project in the affected areas;
- 3) To identify the effects of the project on the lives, culture and collective rights of indigenous Koits;
- 4) To identify the potential problems and issues that exist and may occur in the future on one hand, and identify mitigation measures for affected communities and indigenous Koits on the other;
- 5) To prepare a guide on facilitating dialogue between IPs and duty bearers as well as other stakeholders.



Pictures from interaction programmes with local indigenous community representatives during the study



2.2 Methodology of the study:

The study team on Likhu-4 hydropower project affairs, SWSLSC and SWS Central Committee in coordination with AIPP Foundation and LAHURNIP, collected the primary data gathering by conducting field visits to the areas of indigenous Koĩts affected by the project construction. The methodology included interviewing each individual, conducting interaction programmes, and documenting observations. It also analyzed the documents and archives obtained from the VDCs relating to the project.

After the completion of data collection and analysis of documents, the team wrote the initial draft of the study and conducted discussions among the officials of SWS, the representatives of Koĩts ethnic community and other stakeholders for validation. With the completion of the whole study process, the team came up with the final report.

2.3 Limitations of the Study:

This study was conducted in a short period of time - three months, from November 2009 to February 2010. However, this is a work in progress so it is regularly updated as the project proceeds and the communities struggle. The study covers six VDCs--Tholo (Saipu), Buj (Bhuj), Ragin (Ragani), Khĩchi (Khinji-Chandeswori) and Wachpu (Pokali) where the Likhu-4 hydropower project is being implemented. Through interaction, data collection and analysis, the study focused on the effects of the Likhu-4 hydropower Project on the socio-economic and cultural rights of the indigenous Koĩts and the bio-diversity in the affected area.

3

The Relationship of the River Likhu to the Indigenous Koits

The indigenous Koits have historical relations with the river Likhu as it flows through their areas. Oral tradition reveals the indigenous Koits's origins alongside the Likhu River that is under their Kipat. The Kipat is the traditional system of natural resource management wherein indigenous peoples exercise their rights over lands, territories and natural resources. Special laws and treaties between indigenous peoples and the State recognize the Kipat. The ancestral relationship of the Koits with this river is manifested when they utter the word "Likhu" when they pray to their ancestors and to nature as per their traditional practices. Similarly, they also utter the word when they pray to the dead souls. These deeds are a fine proof that the indigenous Koits have innate relations with the river Likhu.

3.1. Religious and Socio-cultural Relationship

To say that the river Likhu is important to the Koits is an understatement as it is practically their link to life. The Likhu River is a sacred site used not only for cremation or burials of the dead of indigenous Koits but also for cultural and healing activities. Because the indigenous Koits are nature worshippers, they pray to the river by sacrificing a she-goat or a pair of pigeons. Similarly, they also worship the caves, boulders, hills, and trees within their territory in times of planting and harvesting of crops. The Koits utter the word 'Likhu' while performing ritual ceremonies and while praying to the caves, water spots, boulders, hillsides, trees, stones and animals. For traditional treatments, the forest, stone and river come are widely used. These are indications of the community's deep relations and affinity not with the Likhu River alone but also with their natural environment.

3.2 Economic Relationship

The Koits' the main source of livelihood is agriculture together with livestock raising. The Likhu River feeds their livestock and irrigates their farmlands. There is a number of Koits who sustain their lives by fishing, and frog trapping. The Koits fish for the 'Neng' in this river and there are at least three areas within the area where the Likhu-4 hydropower is being built where the fish abound. The River Likhu truly plays a crucial role in the Koits' lives – they collect firewood to cook their food from the land fed by it, but also use it to water their cattle, fish irrigate their fields.

“There are two sources of ‘Neng’ fish. I have been entrusted with the responsibility of safeguarding these sources after division of share with the others. The earnings from fishing are collectively shared among the indigenous Koits. If anyone goes to fish, he gives me my share and sell the rest to the others. This is our collective property. Although the sources of the fish lie in my field, it is shared collectively. But, after the construction of Likhu-4 hydropower, the sources of fish have been blocked, and slowly the indigenous Koits are losing their traditional practice of fishing and knowledge to catch the fish.

The Koits used to go to the riverside with the sound of thunderbolt in the rainy season, since the fish would sprout in the river then. Whereas the fish used to be the main source of Koits to earn money and celebrate various festivals with cheers, nowadays the source of earning has been hampered to some extent. The completion of the project will likely put a full stop to their source of money - fishing. Moreover, I will not get water to irrigate my land either. It is not only the indigenous Koits who are likely to face the negative consequences but also other ethnic people residing in the areas.”

***Rana Bir Sunuwar, one of the
Board of Directors of ‘Kquītabu Welfare Fund’
[The collective fund of indigenous Koits in Likhu-Ragani]***

3.3 Linguistic Relationship

The word, 'Likhu' is said to have been derived from Koits 'lo', the Koits word for 'Li', meaning 'archery' and 'Ku' meaning 'river'. Combining these words, Likhu is the river flowing like an arrow. In earlier times, the river was known to be Lik and later renamed as 'Likhu'. The elder Koits elaborate that the word 'Li' means "bow" and Ku means 'river' in Koits language. Furthermore, the place where the dam is being constructed is called Tupnu Rong, and the names of the villages along the river have been derived from Koits language, for instance, Ruili, Bēber, Lon Bāki. Likewise, the name of the place where the canal is being constructed is called Jili and the affected villages are Preeti, Bhujji, Gupteswor, Duragaun, Saipu, Ragani, Kaati among others. That all these are Koits names indicates the very deep relations with the Koits have with the Likhu River in terms of language.

3.4 Ecological Relationship 12

Indigenous Koits have very close relations with Likhu River since the air, water, forest and land are the main sources that fulfill the needs of the people from birth to death. The natural resources, whether on land, water or in the forest, that are within the scope of the hydropower project at present are the inherent natural heritage of the Koits.

These are explicit and self-explanatory reasons that prove how important the River Likhu is for the indigenous Koits. The relationship between the Likhu River and indigenous Koits is intertwined in many aspects - historical, cultural, social, economical and ecological.

"These are green pastures of indigenous Koits for rearing of cattle and goats. But, after the construction of Likhu-4 hydropower project, we have been deprived of raising our cattle in these pastures from where we get the grass to feed our cattle. We cannot fertilize the fields if we do not bring our cattle here and since there is no compost fertilizer, we doubt if we can harvest adequate crops. This project is likely to bring sadness rather than happiness."

Ganga Bahadur Sunuwar, Ragani

3.5 The historical and cultural heritage of the project-affected area, population and natural resources

The indigenous Koits villages namely, Khinji, Kati, Khinji Chandeswori, Khiji Phalate, Ragani, Pokali, Saipu, Duragaun, Gupteswor, Bhuji, Preeti, are likely to be affected by the construction of Likhu-4 hydropower project. Out of the total 29,493 population of the area, 19,449 are indigenous people, while 10,044 are non-indigenous. Of the indigenous population, 7,427 are indigenous Koits. The biggest portion of land in the

project construction area is the territory of the Koits, wherein their main natural resources are found: forests, drinking and irrigation water, springs, slate, green pastures and irrigated lands.

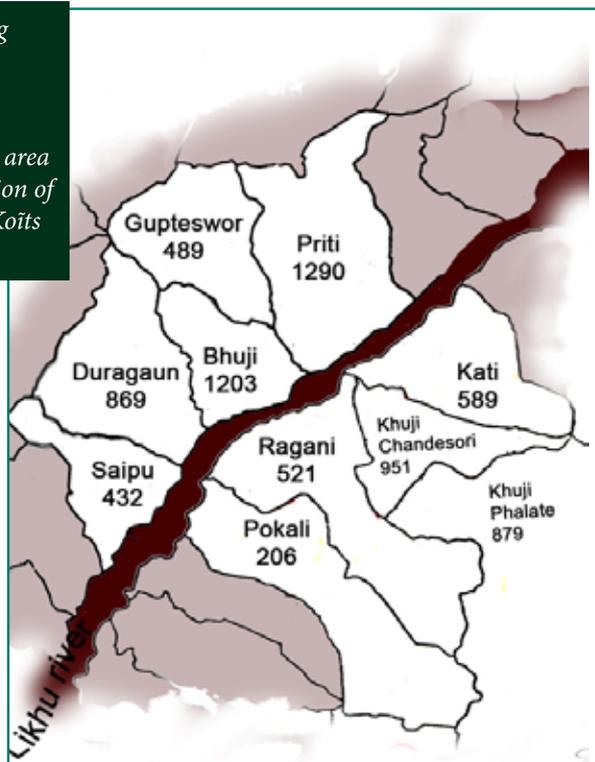
Apart from the natural resources, the affected area also hosts cultural heritage sites like the Lone forest (at present known as a Runa community forest), sacred boulders, Sirinje, Birinje, the cremation areas of the kings and the priests of Kquitich Koits, Rupa Puakhi which is the settlement area of Rupach

Koits's ancestors, Chokati, Tupnu Puakhi and Rong, the Kaatich Koits's ancestors' settlement area, Ragan Shadar Gyor, and the forests that are abundant with numerous varieties of trees, animals, birds and flowers which are now at risk of extinction by the hydropower construction.

3.6 The effects and benefits of Likhu-4 hydropower project

The Likhu-4 hydropower project that has been constructed without free prior informed consent (FPIC) will certainly affect the Koits in various ways. The interruption of the flow of the Likhu River has long-term negative economic, social, cultural, natural, political effects, and the Koits believe they will not get anything beneficial in return.

Map showing Likhu-4, Hydropower project construction area and population of indigenous Koits (Sunuwar).



Based on discussions among the indigenous Koits in the area, the following emerged:

a) Negative effects

- Increased chances of landslides as their territory has steeply sloping lands
- Increased chances of land drying up due to the construction of a canal which will affect the spring water
- Displacement of thousands of Koits who live along the project area
- Possible extinction of endemic fish species and drying up of fish supplies
- Possible sexual violence against Koits women and girls by employees of project and other men who come in as has been the experienced in other communities
- Possible manhandling of Koits by the project employees
- Pollution of the environment
- Negative effects on the traditions and cultures of indigenous Koits
- Problems in social harmony between Koits and the migrant labourers and other people coming in due to the project
- Introduction of various kinds of vices and criminal activities
- Problems on the solidarity, friendship, and harmony among the Koits
- Destruction and disappearance of existing natural, cultural and religious heritage in the area, due to legal or illegal activities
- Violation of indigenous Koits' rights to land, forest, water, natural resources, among others
- Deterioration of traditional occupations and economic activities of the Koits, like animal husbandry and agriculture. The pastures - namely, Kophe, Mahadev, Gainghat, Shen Kharka - have been much affected, it will be difficult for farmers to rear cattle there in the future.
- Loss of traditional knowledge due to the deterioration of activities and rites, and other practices due to the impact of the project
- Cultural degradation, such as the disappearance of Koit place names
- Damage to people's health due to pollution and introduced diseases like

HIV/AIDS

b) Positive effects

- Short-term or emergency employment
- Construction of access roads

4

The discrimination created by the Likhu-4 hydropower project

Likhu-4 hydropower project has violated the indigenous Koits rights especially the rights enunciated in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169. The project has denied the prior existence of indigenous Koits in the area since denied and violated the free, prior informed consent (FPIC) of the Koits affected by the project, from its conceptualization until its present implementation.

4.1 Free Prior Informed Consent (FPIC)

Nepal is a party to the ILO convention 169, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), Committee for the Elimination of Racial Discrimination (CERD) and other international instruments that oblige the State, as well as any Company working in indigenous peoples' area that affect their rights and interest, to comply with the principle of FPIC. Although the hydropower project office claims to have conducted the consultations with the people living in the project area, not a single traditional or representative ethnic organization of indigenous Koits has actually been informed or consulted about the construction of the Likhu-4 hydropower project. As per the finding, the project office only conducted a one-day orientation and interaction programme among the schoolteachers but not on the broad aspects of the project construction during the environment assessment study. This is a violation of the rights of Koits as they have not been allowed to exercise their free prior informed consent on the project.

“We have heard of the rumor that there would be a hydropower project in Likhu River, following the visit of a rock test team in the area. But, we did not listen as to who will construct, when will it begin, how and where would the construction of the hydropower be. When the site office was set up at Sirishe, we assumed that the hydropower is to be constructed very soon in Likhu, but nobody said the fact about the project. Nobody had thought that such an extreme action would occur in our area.”

Rita Sunuwar, Buja

Increasing awareness on rights of indigenous peoples through posters



4.2 Participation

The Indigenous Koits say the hydropower project officials refused to recognize the need for equal and meaningful participation of indigenous Koits in the project processes, even during the start of construction in their area. Additionally, there are claims that some project officials have been misusing their authority, threatening the people, ignoring their voices, giving approval to the project from the far-off capital city Kathmandu. Given all these, there is no participation at all of indigenous Koits in all the project activities, except to voice their opposition and their right to FPIC.

4.3 Discrimination in all aspects

Clearly, from the beginning, there was no intention by the implementing agency and the government to inform or consult the people directly affected by the hydropower project. This simple act of omission is a clear act of discrimination and disrespect for the inhabitants of the affected area. The non-inclusion of the indigenous Koits in the entire process is tantamount to discrimination; not giving due process and consideration to the people who inhabit and regard the place as their political and social territory where they practice their culture, way of life, livelihood and self-governance. The discrimination against the affected indigenous Koits is manifested through the following:

- Indigenous Koits were not consulted while the environment impact assessment (EIA) study was being conducted, during the building of physical infrastructure, on deciding on the use of drinking water in the area for the purpose of hydropower construction. The project report is silent over the inclusion of any compensation plans for the people's traditional health practices and rights to access to clean drinking water, among others. This is social discrimination.
- The study has stated the effects on the Hindu temples, but has remained silent on the indigenous Koits's traditional religion and cultural heritage; it has not included any effect that might occur in the Koits temples and their cultural heritage including their natural sacred sites. The study is biased against indigenous Koits and has not shown any interest in their cultural practices. This is cultural discrimination.
- It was discovered that while the EIA was being done, the price paid for land was the same whether in the fertile plain areas or in the infertile

sloping land. Furthermore, the office did not recruit any one from indigenous Koits in the project work. This is economic discrimination.

- Project authorities declined to meet with the indigenous Koits who visited them to discuss the issues arising from the project. Likewise, their written suggestions were ignored.
- The parliamentarians and political leaders from indigenous Koits have been ignored and their participation has been denied in the decision-making level, instead the leaders and cadres from other districts and from non-indigenous castes have been included in the decision making level. This is political discrimination.
- There is clear gender discrimination since only the male members have been hired in all the positions of the project and thus the project is likely to ignore the participation of women and incorporate their suggestions in any aspect of the project.
- The SWS have tried to get information about the project from the project office and concerned ministries. This was done after interacting with officials from the project office and ministries concerned. However, the SWS have not yet received any single piece information regarding the project. Thus this is a clear case of discrimination in providing pertinent information.
- Likewise, there is a clear case of linguistic discrimination as the officials claimed that they disseminated the information regarding the project. The problem is, information was produced and disseminated in Nepali language only, which the indigenous Koits failed to understand.

5

The demands and common agenda of Koits IPs in developmental activities including the Likhu-4 hydropower project

The indigenous Koits declare that they are not against developmental activities including Likhu-4 hydropower project. However, they are clear on what their demands are.

The following are their agenda and collective list of demands:

1. Indigenous Koits want to exercise their right to free prior informed consent in every phase of any developmental activities in their territory, as per the provisions of ILO convention 169 and UNDRIP.
2. There must be agreement between the project owner and indigenous Koits before implementing any kind of developmental activities in their areas, as per the provisions of ILO convention 169, including benefit-sharing.
3. The prerogative rights to natural resources, land, water, forest and mines must be ensured to the indigenous Koits, as per the provisions of ILO convention 169.
4. There must be meaningful and equal participation of indigenous Koits in all levels of project implementation, as per the provisions of ILO convention 169.
5. The project budget must allocate funds for the welfare of the indigenous Koits to compensate and equally, to mitigate the long-term effects caused by the project.
6. The cultural, historical, social, religious and bio-diversity heritage of the indigenous Koits must be preserved and accounted for in the EIA.
7. Along with project implementation, the sustainable infrastructure development must be devised in the areas of indigenous Koits with the

full participation of the affected Koïts.

8. The environmental and social effects assessment of Likhu hydropower project must be conducted with the full and meaningful participation of indigenous Koïts from the respective villages where the projects are implemented.
9. The free, prior and informed consent of the Koïts for any project must be taken at the beginning for the purpose of guidance on what must be done and what must not be done.
10. The project must include a monitoring committee among the Koïts.

6

Conclusion

The study on the Likhu-4 hydropower project clearly indicates that the project has been implemented without the free prior informed consent of the indigenous Koits. This is not only against their will, but the project has also ignored the existence of the indigenous Koits, as the project planners and implementers have not shown any interest in the affected people's participation and incorporation of their suggestions, nor to address their concerns when the government proceeded to implement the project despite questions raised by the Koits in the proper channels. Such a biased and discriminatory act of the government has encouraged different ethnic people residing in the area, including indigenous Koits, to protest and take action against the project. The implementation of the project without the consent of the indigenous Koits is likely to result in social conflicts and negative effects on the traditions and culture of indigenous Koits leading to ethnocide. The project does not have any other alternative but to implement the project in a meaningful partnership with and equal participation of indigenous Koits in the area, with the incorporation of their valuable suggestions to the project, addressing the concerns they raised and ensuring equitable benefit-sharing.

Lists:

A) The organizations involved in the study

- 1) Sunuwar Welfare Society - Likhu Struggle Committee
- 2) The task force formed to study the Likhu hydropower project, Sunuwar welfare society
- 3) Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)
- 4) Asian Indigenous Peoples Pact (AIPP) Foundation
- 5) Local Committees of Sunuwar Welfare Society
- 6) Kquitch Welfare Fund (Collective Fund of indigenous Koits)
- 7) Koits Chuplu (Chuplu Society - the traditional organization of indigenous Koits)

B) The questions asked while conducting the interactions and discussions

- 1) When was the Likhu hydropower project implemented in the area?
- 2) How did you know about the implementation of the project?
- 3) Were you and your community informed before implementation of the project?
- 4) How was your participation in the project implementation?
- 5) What is the relation between you and Likhu River?
- 6) What is the importance of Likhu River for your indigenous Koits community?
- 7) What sort of effects will the Likhu hydropower project have?
- 8) How many villages of Indigenous Koits will be affected from the implementation of this project?
- 9) Have the name of the Koits villages been changed, where the project has made effect? If yes, what are those?
- 10) How do you think must this project be implemented?
- 11) What sort of benefits can your community gain from the implementation of the Likhu hydropower project?
- 12) Has anyone from your community been recruited to any position in the project? If yes, who are they?
- 13) What sort of benefits and effects have your community and village gotten from the implementation of the project?

14) And last, do you have anything to say regarding this project?

C) The action plan made by the participants during the interaction and discussions

Below is the action plan made by the indigenous Koits who participated in the interactions and discussions regarding the project implementation:

- 1) Collection of data and information
- 2) Submission of the memorandum to the concerned authorities and Ministries by Jan. 15, 2010
- 3) Dissemination of information
- 4) Organizing press conference
- 5) Wall painting
- 6) Conducting interactions, workshops and discussions
- 7) Forming a network or alliance of indigenous Koits and other indigenous and non-indigenous communities
- 8) Declaration of mass protest

List number 1:

The official copy of the letter written by Sunuwar Welfare Society seeking information from the concerned Ministries, authorities and offices regarding the project:

.....
.....

Subject: Requesting to provide information and documents

It is fact that the Likhu Hydropower Project, where it is going to be implemented, is the kipot or the areas of indigenous Koïts. It is also the fact that the representative ethnic organization of all Sunuwar, Sunuwar Welfare Society has always shown the concerned on the project. Therefore, as provisioned in the national and international legal documents, aiming to be informed on the project, I on behalf of SWS would like to request you to provide available financial report, study reports, documents and the information regarding the Likhu Hydropower Project.

.....
Tanka Ram Sunuwar
Chairman
Suwuwar Welfare Society
Central Committee

List number 2:

This is the copy of the letter written by Sunuwar Welfare Society and handed over to the Putalisadak based project office entitled Green Venture Pvt. Ltd on Likhu-4 hydropower project.

To
The Chief
Likhu-4 Hydropower Project
Green Venture Pvt. Ltd., Putalisadak, Kathmandu, Nepal

Subject: To draw your attention

We on behalf of all indigenous Koits (Sunuwar) would like to extend our genuine pleasure towards the beginning of Likhu-4 hydropower project and would like to draw your attention on following points and request you to reach in consensus through the proper dialogue with the respective indigenous Koits.

.....
Tanka Ram Sunuwar
Chairman
Sunuwar Welfare Society

List number 3:

To
The Chief
Likhu-4 Hydropower Project
Putalisadak, Kathmandu

Subject: To draw your attention

Sunuwar (indigenous Koits) are one of the 59 indigenous nationalities listed by the government of Nepal. According to census 2001 (we believe is wrong) states that Sunuwar stands some 27.93 of the total indigenous population. The eastern and central hilly districts namely—Ramechhap, Dolakha, Okhaldhunga and Sindhuli are the kipot or the settlement areas of Sunuwar. Some of them have now migrated in various districts, Terathum, Taplejung, Khotang and Solukhumbu to name a few, moreover they have also reached to Sikkim, Bhutan Meghalaya, Darjelling and Asham in India.

Sunwuar Welfare Society was set up in 1998, following the political change in 1990; it was registered officially in Kathmandu district office. It aims at preserving, protecting and defending the rights and the identity, traditional religion, culture, language, indigenous Knowledge of the Sunuwar (indigenous Koits). SWS, that was established with non-profit making motive has branches in 3-regions, 23 districts and 45 villages across the country.

Since the Likhu-4 hydropower project, the biggest ever project is going to be constructed in the River that flow through the areas of Sunuwar especially in between the Ramechhap and Okhaldhunga is the center of happiness and concerned of all the Sunuwar community. Furthermore, as Nepal is heading towards the restructure and in building new Nepal and the fact is that Nepal has already signed on the ILO convention 169 with the commitment to ensure the rights of indigenous nationalities of the country, but the project implementation in their areas without following even a single provision of this legal documents has raised the doubt on ensuring the rights of indigenous Koits.

It is the responsibility of the government to proper implementation law and constitution in regards to convention. The Interim Constitution

2007 article 33 (13) states that the international instruments that Nepal is a state party is the government responsibility to make sure the proper implementation, so as the constitution of 1990 section (9) states that all the international conventions that Nepal is a party would have a similar status of national constitutions and laws. In case the provisions of national laws conflict with the provisions of international conventions, the provisions of international laws are gets the legal status and be implemented. Therefore, since the ILO convention 169 has got the status of national laws, the developmental agencies that implement any kinds of developmental activities needs to implement the provisions set by these conventions.

Therefore, Likhu-4 hydropower project is known to have implemented its project ignoring the practice of the rule of law and without following any single provision of the national law and without doing any necessary but pre-homework before implementing the project. Thus, Sunuwar Welfare Society, the representative of all the sunuwar across the country, as per the provision of ILO convention 169 urge all to ensure the collective welfare and development of the area at the beginning and then only move forward. Thus, we would like to draw the attention on the demands made by the participants in the interaction held on Aug. 7, 2009 and request to heed on these with priority.

- 1) As per the consultation theory article 6, the consultation needs to be conducted among the indigenous peoples in case of implementing any developmental activities in their areas. As the Likhu-4 hydropower project has been implementing its project without any consultation, we Sunuwar welfare society strongly urge the concerned authorities, Ministries and office to conduct the wide consultation with the respective communities and the representative organization to take consent and then only more implement the projects.
- 2) Participation theory, respective Indigenous nationalities of the project areas need to be involved in designing the project, its implementations and evaluations.
- 3) Need identifying Theory, the concerns must be shown in the cultural, traditional, norms and value of the indigenous peoples while designing of any developmental activities in the areas of indigenous nationalities.
- 4) Effect evaluation theory, the effect assessment of the areas must be conducted massively in the participation of the indigenous nationalities of the area, prior to the implementation of the project implementation.

Equally the study on the possible affects on the social, cultural, spiritual and environmental effects must also be conducted in the indigenous nationalities areas prior to implement any developmental activities.

- 5) Benefit sharing theory, all the developmental projects and activities must bring improvement on the lives of indigenous nationalities' social and economical aspects. Such activities should not cause any negative consequences in their progress.

.....

Tanka Ram Sunuar
Chairman
Sunuwar Welfare Society
Koteshore, 35, Kathmandu

List number 4:

This is the proof copy on submission of the study on the indigenous Koich's rights to natural resource 2010, to the Ministry for Environment, Science and Technology.

To

The Minister for Environment, Science and Technology
Government of Nepal, Ministry for Environment, Science and Technology
Singh Durbar, Kathmandu

Subject: requesting to incorporate the collective agendas and issues of Indigenous Koits

It is to inform you that the study prepared by the Green Venture, Pvt. Ltd on the assessment environment and social effect relating to the Likhu-4 hydropower project has remained silent over the effect that occurred and might occur on the social, culture, economic, traditional, religious aspects and natural resources. Therefore, we urge government to reevaluate or revisit over the assessment and incorporate the collective issues, demands and possible effects concluded in the study conducted by the taskforce formed to conduct the study in this regard by the Sunuwar Welfare Society—the representative organization of whole Sunuwar across the country.

.....

Tanka Ram Sunuwar
Chairman
Sunuwar Welfare Society

Reference Materials

- 1) National Foundation Development of Indigenous Nationalities Act- 2058 BS
- 2) Central Bureau of Statistics, Census 2058 BS,
- 3) Koĩts Bu, SWS
- 4) Koĩts Bu, 10th year special edition, SWS, Kathmandu
- 5) Kaatich, Koĩts Bu, Thama-Lo (Chuplu Society, Kathmandu, 2065 BS)
- 6) Koĩts Bu, Katich, Den Ye Serem Phu (Chuplu Society, Kathmandu 2062 BS, page 10, comment: the name of River and general Sunuwar (Koĩts) or Kirati utter the words Tamakoshi, Likhu, Sunkoshi, while performing ritual ceremony)
- 7) The summary of study Report by Green Venture Pvt. Ltd, Putalisadak
- 8) Naya Nepal, Sunuwar Language Page, Gorkhapatra Daily
- 9) Sunuwar, Iswor Kiran, 2065, Liku (Khu) and its Suseli, for Sensitization Suseli, edition 1.1, page, 22 and 24
- 10) Report of Central Bureau of Statistics, 2058 BS,
- 11) Sunuwar, Lokpriya, 2059 BS, Gil Syadar, Koĩts Bu, edition 11.1 page 1:7

6

ANNEX

Legal Provisions relating to Water and Natural Resources

a. Interim Constitution

The Interim Constitution of Nepal, 2007 was promulgated after the political change in 2006, having determined upon the progressive restructuring state to resolve problems of the Country relating to caste, religion etc. There are number of other laws and policies to govern and regulate the sustainable use, conservation, protection of the natural resources, maintenance of ecological processes and systems as well as equitable sharing of the benefits accrued. The right to live in clean environment is a fundamental right and the violation of this right is subject to be enforced by the Apex Court.³ State shall mobilize the natural, resources and Biodiversity and equitable sharing of benefit of the sustainable use of them.⁴ While mobilizing the national resources and heritages in accordance with the national interest, State shall give priority to the local community.⁵ State shall adopt a policy to identify and protect the traditional knowledge, skill, and practice and modernize them.⁶ The Article 16 of the Interim Constitution spells out every person shall have the right to live in the clean environment harmoniously with the nature according to their way of life. Similarly Indigenous Peoples are entitled to the have equitable share of benefits from the use of forest, resources and biodiversity according to the Article 35(5); however, the Constitution doesn't specifically recognize Indigenous

² Article 16 of the Interim Constitution 2007

³ Article 32 Ibid

⁴ Article 35(5) Ibid

⁵ Article 35(4) Ibid

⁶ Article 35(18) Ibid

Peoples' rights over natural resources albeit the term Indigenous Peoples is used interchangeably with the term of local community in Nepalese legal regime, that marginalize IPs. In the changing political situation, IPs are clearly demanding their de jure and De facto recognition in laws, policies and programs relating to natural resource mobilization, however the government position is to retain the term Local Community to indicate Indigenous Peoples.

The Interim Constitution doesn't have provision that exclusively determines the sovereignty over lands territories and natural resources vested to state or peoples however the ownership of water resources vested to the state⁷. In contrast to the provision of the water resources Act there are number of international instruments including C.169, UNDRIP, CERD etc. that guarantee IPs' rights over lands territories and natural resources and Nepal is a party to these instruments and the provisions of international laws prevail national laws in case of inconsistency.

1. Land Acquisition Act, 1977

Land Acquisition Act, 1977 (Here after LAA) is the specific legal instrument governing land acquisition and compensation to acquire any land at any place for any public work but subject to compensation under this Act.⁸ The Public work refers to the work of general public interest, benefit or use.⁹ The lands which is not used or more than needed after acquisition shall be returned to the owner.¹⁰ A short notice of 3 days shall be issue before the acquisition takes place and immediate action are carried out by the relevant authority. A complaint can be filed in the Home Ministry against the notice within 7 days if there any reason not to do so. There is option to take lands instead of money for compensation based on the choice of owner whose lands taken under the acquisition.

2. Land Acquisition Regulation, 1969

The Land Acquisition Regulation (LAR) states compensation rate and designates competent authorities for compensation. They were initially set up under the Land Acquisition Act of 2018 (1968) and later replaced by the Land Acquisition Act of 2034 (1977). But the regulations have not yet been updated.

⁷ Sec. 3 of the Water Resource Act, 1992

⁸ Sec. 7 of the LAA

⁹ Sec. 2 Ibid

¹⁰ Sec.34 Ibid

It is important take into account, that the existing national laws and policies do not recognize Indigenous Peoples' rights over lands territories and natural resources, so there is not clear provisions relating to collectively owned traditional lands, forests and natural resources however after the ratification of the C.169 and being a party to the UNDRIP IPs rights' over traditional lands and natural resources is guaranteed and required to reform the inconsistence laws. IPs and their representative organizations have been exclusively advocating for asserting their rights relating lands territories and natural resources that overwhelmingly bringing challenging towards between Hydro- Project Company and government who are not sensitive enough to comply those rights. On the other hand, the existing provisions of the LAA and LAR do not ensure access to justice of IPs if their lands taken in legitimate injustice way due to the current official language policy that refrains to use mother-tongue of IPs creating language bearer and violates right to notice. Simultaneously, the complaint authorities are either located in capital or in district headquarter which is almost impossible to reach within a week due to the geographical remoteness from IPs homelands.

3. Water Resources Act, 1992 (amended 1996)

The Water Resources Act (WRA), 1992 states the ownership of water resource vested to state of Nepal.¹¹ If the government or a licensee implements construction work relating to the development and utilisation of water resources, the government or licensee may prohibit the use of the premises, whether a house or land. The government allows using, developing and expanding services to national, international company and individual by entering into a contract.¹² The government or the licensee, however, has to pay compensation as prescribed to the concerned person for the damage or loss caused by the prohibition. The Act does not specify the right of prior use of water resources for micro-hydropower projects for electricity production in the hilly areas of Nepal. Thus, the right of prior use for agro-processing and electricity production could be diverted as and when deemed necessary for irrigation, without compensation to the owners if such a situation arose.

¹¹ Sec. 3 of WRA, 1992

¹² Sec. 12 Ibid

4. Hydroelectricity Development Policy, 2001

The main objective of this policy is to produce low-cost electricity, using existing water resources and develop electricity as export goods. One of the policies is to attract and encourage national and international investors as well as transparent process in this regard. Management of appropriate benefit to the local level, adequate step to cope the risk in hydroelectricity projects, measures to reduce environmental impact and rehabilitation of displaced family are some of the main policies are stipulated in the Policy.

Programs that are recommended by EIA will be managed to implement and 10 percent or the portion of water recommended by EIA shall be released to manage environment. The policy has provision relating to the right of project over water that says legal measures shall be adopted without jeopardizing project's right. One percent of royalty will be provided to the VDC from the government's royalty for the expansion of electricity. According to the Local Self-governance Regulation, 1999, 10 percent of royalty will be given to district development committee for the development of the district and it shall be managed to provide direct benefit to the local people from the hydro project.

5. Electricity Act , 1992

The Electricity Act (EA) is concerned with developing electric power and providing standard and safe electricity services to the people. This Act has the same provisions about land acquisition and prohibition on using the premises of construction area as are earmarked in the Water Resources Act. The same procedure is also applied in paying compensation. The EA requires permission Paper (License) by submitting prior application from individual or organized institution (Legal Person) who want to survey, produce, expand or distribution electricity requiring submission of economic, technical and environmental study report inter alia other requirements determined by existing laws policies.¹³ The duration of the permission varies in subject wise: five years for survey and for producing, expanding and distribution' duration is 50 years.¹⁴ In relation to this, there are different duration of the License based on the nature of the project: respectively; for the project supply to internal demand 35 years, for the project to export electricity for 30 years etc.¹⁵ The EA opens door

¹³ Sec. 4 EA, 1992

¹⁴ Sect 5 Ibid

¹⁵ No 6.12. 11 other Electricity Policy, 2001

for international company and corporation to invest in hydro project, government can make contract to buy electricity with individual or company who have permission to conduct hydro project. By getting permission from the government, the company can export electricity out of the country. The authorized individual or company has right to utilize water resources, stipulated in the permission paper (License).¹⁶

6. Environment Protection Act, 1997

The Environment Protection Act and its regulation require a thorough study on a storage project, according to the WCD guidelines. This includes the processes of public hearings, systematic environmental studies, ranking and screening of projects based on economic, social and environmental factors. There shall be no execution of any proposal without approval and it is required to submit preliminary environment assessment or environment impact assessment report for the approval of the proposal.¹⁷ Re-environmental impact assessment can be required if it deems felt necessary in the screening process of the proposal.¹⁸ There is not clear provision for the social impact assessment in the Act and Regulation.

7. Local Self-Governance Act, 1998

This Act decentralises the power to mobilise local resources for development to the local bodies. The Act delegates responsibility and authority to District Development Committees (DDCs), municipalities and Village Development Committees (VDCs) for carrying out all local development activities, including their formulation, implementation, monitoring and evaluation. For this purpose, local governments may acquire land and utilise it.

¹⁶ Regulation 20 of the Electricity Regulation, 1993

¹⁷ Sec.4 and 5 of the Environment Protection Act, 1997

¹⁸ Sec.6 Ibid