

Fact Finding Mission Report

## **Violation of Indigenous Peoples' Human Rights in Chitwan National Park of Nepal**

**Submitted to:**

Independent panel of experts-WWF Independent review

**Submitted by**

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## **Executive Summary**

Indigenous Peoples (IPs) of Nepal make up 9.54 million (36%) out of a total population of 26.5 million of the Country (Census 2011). The National Foundation for Development of Indigenous Nationalities (NFDIN) Act, 2002 recognizes and enlists 59 IPs or Indigenous Nationalities (*Adibashi Janjati*), with distinct cultures, traditions, beliefs system, social structure and history. At present, the Protected Areas (PAs) in Nepal include 12 National Parks, 1 Wildlife Reserve, 1 Hunting Reserve, 6 Conservation Areas and 13 BZs, covering over 3.4 million ha or 23.39% of the country. Most of the PAs are established in ancestral lands of IPs, displacing them and adversely impacting their existence, livelihoods, identity, and culture. They continue facing systematic discrimination as well as sexual offences against women, which qualifies as racism against IPs.

This report is an outcome of a fact-finding mission looking into human rights violations as well as abuses in Chitwan National Park (CNP) of Nepal. The study enquires into, and traces recent reports by BuzzFeed, The Kathmandu Post and other media as well as reports which claim that the World Wide Fund for Nature Conservation (WWF) -one of conservation's most famous organization-is responsible in many ways for torture, killings, sexual abuses as well as other gross human rights violations as part of their attempt to fight poaching. WWF has not only closed its eyes against human rights violations and abuses against IPs; in contrast, it encourages this by rewarding the perpetrators.

This report begins with a desk-study examination of the background and reasons for the establishment of the CNP. It provides information about the status of PAs in Nepal, a brief history of CNP and the laws and policies related to National Parks and Wildlife Conservation (NPWC).

The second part of the study provides an overview of key findings on human rights violations and abuses against IPs in Nepal found during the fact-finding mission to CNP. The sub-sections present details of the killings, mistreatment, arbitrary detention and sexual abuse, problems of statelessness and the violation of the right to citizenship, violation of land rights and displacement from PAs, loss of traditional livelihoods, violation of cultural rights, community empowerment and representation, conflicts and racism. The report goes on to discuss a range of IPs' human rights within the context and background of PAs, status of their implementation, and the implications for human rights of IPs and conservation issues when their rights are violated. One section critically analyses the implications of technical and financial support by conservation organization, like, WWF to the Government of Nepal (GoN) in particular. This section of the report draws out the struggles, sufferings and triggering incidents that occurred in Tharu, Bote, Majhi, Darai and Kumal IPs, who have been living in the adjacent areas of CNP from generation to generation. This is followed by a sub section, which examines the serious question of poaching cases in CNP.

The report explores the past and contemporary responses regarding the allegations of human rights violations and abuses by WWF. The analysis of this main section of the report has also helped to determine how WWF is directly addressing the implementation of its own international commitments like their social policies in particular related to the policy of IPs. It demonstrates WWF's failure to implement the 'new conservation principles' and human rights based approach to conservation for working with IPs and it shows serious gaps and contradictions in the implementation of WWF policy. As far as we know, WWF are not directly involved in these human rights violations and abuses, while their level of collaboration and partnership with those who are, in particular government and local organizations, is significant. Moreover, WWF continued to support and promote the creation

of conservation areas on IPs' lands without their genuine free, prior and informed consent (FPIC). This entails not only a denial of IPs ownership and control, but significant restrictions to access and use their traditional land and natural resources, forced relocation, impoverishment, cultural destruction and the undermining of traditional systems of natural resource management and livelihood practices. The report exposes that IPs who are from around the areas of CNP, report alleged beating, torture, waterboarding, violence, sexual assaults, and murders at the hands of Nepalese soldiers and rangers at CNP, who receive technical assistance and funding from the WWF to protect the area's tiger, one-horned rhinoceroses and other endangered species. The WWF even gave the army battalion, who was alleged on human rights violations and abuses, an award for their efforts against poaching. In addition to this, Assistant Warden Kamal Jung Kunwar, representing the rangers from CNP, was awarded by WWF for "playing an instrumental role in achieving zero poaching for the second year in a row" while Kunwar was one of the perpetrators. WWF Nepal welcomed the government's decision to withdraw the case relating to Sikharam's killing in a glowing press release, March 2007, which mentioned that several conservation organizations had been upset about the charges for accusation to rangers. Then Prime Minister Girija Prasad Koirala's cabinet made decision to withdraw the case after nine months of Sikharam's death. It is also further raises the serious question on issues of concerns of allegations of human rights violation and abuse of beating, waterboarding, violence, tortures and killing of Sikharam Chaudhary. The press release did mention that Sikharam Chaudhary was involved in the poaching; in contrast, which is morally and detrimentally supported to criminal action committed by rangers. It is not limited to this only, as of the Kathmandu Post's report; multiple activists said WWF representatives had urged them to convince Sikharam's family to dropping the complaint, even promising donations to their programs if they agreed. These are the cases that have evidences that could argue how WWF is tied and connected to human rights violations and abuses to IPs in CNP and PAs of Nepal.

Finally, conclusions are drawn up and several recommendations are made to propose the appropriate measures (processes, procedures, reparation and remedies) to prevent human rights violations and abuses and occurrences in the future.

## List of Acronyms and Abbreviations

BS	Bikram Sambat (Bikram Era)
BZ	Buffer Zone
BZMC	Buffer Zone Management Council
BZUCs	Buffer Zone User Committees
CBD	Convention on Biological Diversity
CDO	Chief District Office/Officer
CNP	Chitawan National Park
DDT	Dichlorodiphenyltrichloroethane
DNPWC	Department of National Park and Wildlife Conservation
F&A	Finance and Administration Officer
FGD	Focus Group Discussion
FPIC	Free, Prior and Informed Consent
GoN	Government of Nepal
HHs	Households
I/NGOs	International/Non-Governmental Organizations
ICERD	International Convention on Elimination of All Forms of Racial Discrimination
ILO	International Labor Organization
IPs	Indigenous Peoples
IWGIA	International Work Group for Indigenous Affairs
LAHURNIP	Lawyers Association for Human Rights for Nepalese Indigenous Peoples
NFDIN	National Foundation for Development of Indigenous Nationalities
NPWC	National Parks and Wildlife Conservation
NTEPs	Non-Timber Forest Products
PAs	Protected Areas
RCNP	Royal Chitwan National Park
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of IPs
WCIP	World Council of IPs
WWF	World Wide Fund for Nature Conservation

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# CHAPTETR-1

## INTRODUCTION AND METHODOLOGY

### 1.1. Introduction

In Nepal, Indigenous Peoples (IPs) are termed Indigenous Nationalities (*Adivasi Janajati*) in accordance with the National Foundation for Development of Indigenous Nationalities (NFDIN), 2002, and the Constitution of Nepal, 2015. According to the national census of 2011, the IPs of Nepal comprises 36% of the total population (26.5 million), although IPs' organizations claim a larger figure of more than 50%. The 2011 census listed the population as belonging to 125 castes and ethnic groups, including 63 IPs; 59 castes, including 15 Dalit castes; and 3 religious groups, including Muslim groups.<sup>1</sup> IPs practice collective culture and do not fall under four-fold Hindu Castes System practiced by the dominant national groups, termed as Khas Arya.<sup>2</sup>

Even though IPs constitute a significant proportion of the population, throughout the history of Nepal IPs have been discriminated, marginalized, excluded, subjugated, dominated, exploited and internally colonized by the dominant caste groups in terms of land, territories, resources, language, culture, customary laws, political and economic opportunities, and collective way of life.<sup>3</sup>

It is noteworthy that none of the Nepal's National Parks and other PAs has been established in the territories of IPs without their consent, rights and interests being taken into account. Forced displacements from their ancestral land and territories, denial of self-governance, lack of access to livelihoods, cultural collapse and loss of culture and spiritual sites, social and political marginalization such as non-recognition of their own authorities and denial of access to justice and reparation, including restitution and compensation are some of the consequences for the Indigenous inhabitants of these areas.

Nepal has ratified the ILO Convention No. 169, 1989 and adopted the United Nations Declaration on the Rights of IPs (UNDRIPs), 2007 and the World Council of IPs (WCIP) Outcome Document. The implementation however is still waiting.<sup>4</sup> Nepal also ratified the international Convention Elimination of all forms of Racial Discrimination (CERD) 1969, International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic Social and Cultural Rights (ICESR) 1996, Convention on Elimination on all forms of Discrimination against to Women (CEDAW) 1979 and other core human rights Standards as well as international Convention on Biological Diversity (CBD) 1992. Section of 9 of the Treaty Act, 1991<sup>5</sup> states that provisions of international treaties are equivalent to national law, in case of inconsistency the provision of international treaties prevails over the provision of national law. In Nepal, the provisions of international treaties are not only legally binding, but also need to implement as a national law in the context of PAs.

In 2016, the UN Special Rapporteur on the Rights of IPs, Victoria Tauli-Corpuz submitted a report with a thematic analysis to the United Nations, General Assembly on conservation measures and their impact on IPs' rights. In the summary report, the main concern is that PAs

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<sup>1</sup>IWGIA. (2019). the Indigenous World. Available at: [https://www.iwgia.org/images/documents/indigenous-world/IndigenousWorld2019\\_UK.pdf](https://www.iwgia.org/images/documents/indigenous-world/IndigenousWorld2019_UK.pdf)

<sup>2</sup> Article 84 of the Constitution of Nepal, 2015 explains Khans Aria comprises Chetri, Brahman, Thakuri, Sanyasi and Dasnami community.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Nepal Teaty Act, 1991, Kanoon Kitab Byawastha Samitee (Nepal)

have the potential of safeguarding the biodiversity for the benefit of all humanity; however, PAs have also been associated with human rights violations against IPs in many parts of the world-including Nepal. The respective Rapporteur emphasized that human rights-based approaches to conservation have become widely accepted among leading conservation NGOs. Their internal policy documents are (at times) elusive regarding the specific rights of IPs, while considerable implementation gaps remain and new threats to human rights-based conservation are emerging. The Rapporteur expressed issues of concerns regarding the lack of implementation of the policies and commitments adopted by leading conservation organizations seeking to adopt a “new paradigm” of undertaking conservation, while respecting the rights of IPs.<sup>6</sup>

While a recent report by BuzzFeed and The Kathmandu Post<sup>7</sup> has claimed that the World Wide Fund for Nature Conservation (WWF)-one of conservation’s most famous organizations, is directly involved with beating, torture and killing as part of their attempt to fight against poaching. Within this given background and context, this study focuses on an analysis of the issue of gross human rights violation in the National Parks of Nepal, in particular the Chitwan National Park (CNP).

This study attempts to show an urgent need to replace the exclusionary fortress-conservation model with human rights-based approaches that respect collective and individual rights of IPs to both improve conservation outcomes and end human rights violations and abuses committed in the name of conservation.

## **1.2. Objectives**

1. To review, examine and assess the recent allegations of human rights violations and abuses in the CNP, where WWF has been supported in conservation initiatives.
2. To identify the range of rights of IPs within PAs, their implementation, and the implications for human rights and conservation when their rights are violated.
3. To propose appropriate measures (processes, procedures, reparation and remedies) to prevent human rights abuses, violation and occurrences in the future.

## **1.3. Methodology**

This study is largely based on the primary data acquired from the affected communities. Field visit and participant observation, formal and informal interactions were also held during the study period. An interaction meeting was also conducted with the women groups in particular to discuss and get insights about the issues of concerns at hand. In the course of the study key informant interviews and focus group discussions were held in the park affected sites in Chitwan district. Similarly, consultations with rights and stakeholders were also held to justify data and get deeper information pertaining to the issues. However, secondary data available from related literature was also used.

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<sup>6</sup> Report of the Special Rapporteur of the Human Rights Council on the rights of IPs, Victoria Tauli-Corpuz. See \*A/71/150. July 29, 2016. Available at <http://unsr.vtaulicorpuz.org/site/index.php/en/documents/annual-reports/149-report-ga-2016>.

<sup>7</sup> See the details of news report by Warren, Tom and Baker, Katie J.M. (March 4, 2019). WWF Funds Guards Who Have Tortured and Killed People, BuzzFeed News. available at <https://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death> news report by Tsering D Gurung (March 3, 2019). Nepali park officials tortured a man to death. Then, the government and the World Wide Fund for Nature rewarded them. An investigation report by The Kathmandu Post. available at <http://kathmandupost.ekantipur.com.np/news/2019-03-03/nepals-park-officials-who-beat-and-tortured-a-man-were-rewarded-by-the-government-and-the-world-wide-fund-for-nature.html>

The secondary data was primarily gathered through desk reviews. For that analysis of related documents, reports and government policies were also carried out to get secondary information and analyze legal provisions. Visual documentation was also taken during the field study.

Finally, a discussion on the preliminary draft as well as final report with the field visit team was also conducted to verify data and receive inputs. The inputs received from them have been accommodated in this report. The report was shared and verified with constitutional bodies including three National Human Rights Commission (NHRC), Adiwasi Janjati Commission, Tharu Commission and National Foundation for Development of Indigenous Nationalities (NFDIN).

#### **1.4. Limitations of the study**

Due to time and resources constraints this study is concentrated in CNP only, and only taking into account representative sampling sites with focus on the directly affected Tharu, Bote, Majhi, Kumal and Darai IPs. The study team has an assumption that PAs in Nepal have similar issues of concerns, problems and human rights violation and abuses but we were not able to cover all.

The field visits were made in the Chitwan district around the areas of CNP only. Apart from that, limited access to information was also experienced in the course of this study, basically on gross human rights abuses and violation. Despite the constant requests, WWF Nepal refused to have any meeting with the study team in the field and in Kathmandu. However, a discussion meeting was conducted with the Manoj Shah-Project Manager and Rajan Rijal-Finance and Administration (F&A) officer of the Protected Areas and Buffer Zone (PABZ) projects, which are being implemented jointly under the Terai Arc Landscape (TAL) Program<sup>8</sup> by Government of Nepal (GoN), Department of National Park and Wildlife Conservation (DNPWC) and WWF Nepal. Peer Review was done by expert of IWGIA Ms. Signe Leth .

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<sup>8</sup>The Terai Arc Landscape (TAL) program is WWF Nepal's largest landscape level initiative supporting the government's TAL program and involves a large number of partner organizations, donor agencies, stakeholders, community-based organizations and local people. The TAL program was initiated in Nepal in 2001 by the Government of Nepal with the collaboration of WWF Nepal and Department of Forests (DoF) and Department of National Parks and Wildlife Conservation (DNPWC) of the Ministry of Forests and Soil Conservation. See in details [http://www.wwfnepal.org/about\\_wwf/where\\_we\\_work/tal/](http://www.wwfnepal.org/about_wwf/where_we_work/tal/) .

## CHAPTER-2

### PARKS AND POLICIES

#### 2.1. PAs in Nepal

Several Parks, Reserves, Conservation Areas and BZs are established to protect species of animals and unique natural areas of Nepal. At present, the PAs in Nepal include 12 National Parks, 1 Wildlife Reserve, 1 Hunting Reserve, 6 Conservation Areas and 13 BZs, covering over 3.4 million ha or 23.39% of the country.<sup>9</sup> The establishments of PAs are mainly adopted from the park model of the United States of America where we saw the first “modern” protected areas in 1872, Yellowstone National Park, and in 1890, Yosemite National Park.<sup>10</sup> Most of the PAs in for example India, Nepal and the Philippines include the territories of IPs.<sup>11</sup> The land areas of the National Parks in Nepal, has significant spatial overlap with traditional lands of IPs.

##### 2.1.1. The Chitwan National Park

Since the end of the 19th century Chitwan – *Heart of the Jungle* – used to be a favorite hunting ground for Nepal's ruling class of the Rana regime during the cool winter seasons.<sup>12</sup> The feudal Rana prime ministers of Nepal used the area as a personnel hunting reserve from 1846 to 1940.<sup>13</sup> Until the 1950s, during the Rana regime, the Chitwan valley<sup>14</sup> was a privileged hunting ground.<sup>15</sup> It was set up as the comfortable camps for the feudal big game hunters and their entourage, where they stayed for a couple of months shooting hundreds of tigers, rhinoceroses, leopards and sloth bears.<sup>16</sup>

After the end of the Rana oligarchy and following the malaria eradication in the Tarai in the plains of Nepal in the late 1950s, wildlife conservation became an issue of concern as massive deforestation of vast tracts of land and the government sponsored a massive resettlement program to make them available for newly arrived farmers, among of them many people came down from the hills to the Tarai valley of Chitwan due to floods reason in the hills. In 1953 floods washed away hundreds of farms in the hill region of Nepal. As a result one of the goals of the Rapti Valley Multi-purpose Project was to convert forests into farmlands and so the government encouraged flood victims to migrate to the Chitwan district to clear and cultivate land which they could eventually hope to own. This had devastating impacts on the Tharus system of land ownership, as not only did the Tharus lose their forests, but many uneducated Tharu families lost land because of the exploitation of hill people

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<sup>9</sup> Thakali, Sailendra et.al. Conservation and Prosperity in New Federal Nepal: Opportunities and Challenges. The Australian Aid-The Asia Foundation, the Snow Leopard and MOUNTAIN SPIRIT, 2018.

<sup>10</sup> See footnote 6.

<sup>11</sup> Stan Stevens, ed., IPs, National Parks and Protected Areas: A New Paradigm Linking Conservation, Culture and Rights (Tucson, Arizona, University of Arizona Press, 2014) cited in Victoria Tauli-Corpuz, Conservation and IPs' rights. Report to the General Assembly by the Special Rapporteur of the Human Rights Council on the rights of IPs, 2016. Victoria Tauli-Corpuz.

<sup>12</sup> From Wikipedia, the free encyclopedia. Available at [https://en.wikipedia.org/wiki/Chitwan\\_National\\_Park](https://en.wikipedia.org/wiki/Chitwan_National_Park)

<sup>13</sup> Jana, Sudeep. Working towards environmental justice: An Indigenous Fishing Minority's Movement in Chitwan National Park, Nepal. Kathmandu : International Centre for Integrated Mountain Development, January (2007).

<sup>14</sup> The Chitwan Valley is an Inner Terai valley in the south of Nepal, encompassing the districts of Makwanpur, Chitwan and Nawalpur. The valley is part of the Terai-Duar savanna and grasslands ecoregion of about 150 km (93 mi) length and 30–48 km (19–30 mi) width.

<sup>15</sup> See footnote on 12.

<sup>16</sup> See footnote on 12.

claiming ownership of Tharu lands,<sup>17</sup> -caused a new threat to the existing wildlife in the area. The most well-known endangered species was the Asiatic one-horned rhinoceros.<sup>18</sup> In 1950, Chitwan's forest and grasslands extended over more than 2,600 km<sup>2</sup> (1,000 sq mi) and was home to about 800 rhinos in the first census. When poor farmers from the mid-hills moved to the Chitwan Valley in the Terai in search of arable land, the area was subsequently opened for settlement, and poaching of wildlife became rampant.<sup>19</sup> From 1957, onwards, the one-horned rhino and its habitat became a symbol for wildlife conservation in Southern Nepal.<sup>20</sup> By the end of the 1960s, 70% of Chitwan's jungles had been cleared, malaria<sup>21</sup> eradicated using Dichlorodiphenyl trichloroethane, commonly known as DDT, so thousands of people from hill migrants had settled in the Terai, including the Chitwan valley, and a high proportion of the valley's forest disappeared, only 95 rhinos remained,<sup>22</sup> and the number rhino declined rapidly due to poaching and various reasons such as habitat encroachment leading to rapid decline in rhino population. In 1966 and 1972 Nepal recorded only 100 living rhinos.<sup>23</sup> These people are basically migrated from the hills of western Nepal.

As the pressure for wildlife conservation began to build, the then ruler, King Mahendra, gave sanction to the creation of the Royal Chitwan National Park (RCNP). The RCNP was created in 1973 and was the first such delineated area for wildlife preservation in Nepal,<sup>24</sup> which is now termed as CNP. The CNP is located in the sub-tropical Inner Terai lowlands of south-central Nepal in the districts of Nawalpur, Parsa, Chitwan and Makwanpur. It covers an area of 952.63 km<sup>2</sup> (367.81 sq mi). The CNP is traditional homelands to IPs, mainly Tharu, Bote, Darai, Kumal and Majhi. However, upon King Mahendra's decision to make the park "protected," the IPs were told they had to leave behind the land of their ancestors and every facet of their livelihoods.

CNP impacted the Tharu, Kumal, Darai, Majhi and Bote IPs about from 12 village development committees of Chitwan. Approximately, 60, 000 IPs of 6 Village Development Committees (VDCs) from 1. Meghauri, 2. Patihani, 3. Ayodhyapuri, 4. Bachhauri, 5. Jagatpur, 6. Kathar were highly impacted by the establishment of CNP.<sup>25</sup> The brutal reality is that, the

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<sup>17</sup>Elder et al (1976). Planned Resettlement in Nepal's Terai: A social analysis Khajura/Bardiya Projects. Kathmandu; Institute of Nepal and Asian studies and centre of economic development and administration, Tribhuvan University; Madison, WI; University of Wisconsin

<sup>18</sup> See footnote 13.

<sup>19</sup> See footnote 13.

<sup>20</sup> See footnote 13. The Wild Life Protection 1957 (2015 BS) provided a legal basis for the protection of wildlife. In 1959, a 175 sq. km area of Tikauli forest was declared a mriga kunj (deer sanctuary). In 1963, the area south of the Rapti River was established as a Gairwa Kunja (rhino sanctuary), which is now located on the edge of CNP.

<sup>21</sup> See footnote 12. Malaria is a mosquito-borne infectious disease that affects humans and other animals.

<sup>22</sup> See footnote 12. The dramatic decline of the rhino population and the extent of poaching prompted the government to institute the Gairwa Gasti – a rhino reconnaissance patrol of 130 armed men and a network of guard posts all over Chitwan. To prevent the extinction of rhinos the Chitwan National Park was gazetted in December 1970, with borders delineated the following year and established in 1973, initially encompassing an area of 544 km<sup>2</sup> (210 sq mi)

<sup>23</sup> Number of one-horned rhinoceros on the rise in Chitwan National Park, published by Himalayan News Service, March 25, 2017. Available at [https://thehimalayantimes.com/nepal/number-one-horned-rhinoceros-rise-chitwan-national-park/Rhino census likely from mid-February till mid-May](https://thehimalayantimes.com/nepal/number-one-horned-rhinoceros-rise-chitwan-national-park/Rhino%20census%20likely%20from%20mid-February%20till%20mid-May), published by Himalayan News Service, September 05, 2019 available at <https://thehimalayantimes.com/nepal/rhino-census-likely-from-mid-february-till-mid-may/>.

<sup>24</sup> See footnote 13.

<sup>25</sup> Dura, Mahendra. Case Study on affected IPs by CNP. Trilateral dialogue and study report on the development and its impact on the ancestral land of the IPs. Edited by Jagat Lama. LAHURNIP in association with NFDIN, ILO, IWGIA and ActionAid. 2011.

Nepali government has forcibly removed all of the IPs in the Chitwan district and they were displaced in order to create such a pristine National Park.<sup>26</sup>

Section 26 of the Land Acquisition Act 1977 indirectly talks about consent of the land-owner. According to the provision, if an owner gives consent after government acquiring his land without following due process i.e. giving notice, checking appropriateness, defining and providing compensation etc. It would be a legitimate land acquisition. People were displaced without getting their consent according to the information provided during field trip to CNP area.<sup>27</sup> Importantly, Section 3.2.a of the Immovable Property Act, 2013 also restricts displacement of people from their houses. And, in the case of eviction, to provide houses/shelter and land for resettlement of displaced people is a basic legal requirement and it has been ignored by the authorities and all of the Conservation organizations including WWF, that are working in CNP. None of them resolved the forced eviction issue. Manoj Shah-Project Manager and Rajan Rijal-F&A officer of PABZ projects, which are being jointly implemented under the TAL Program by WWF and DNPWC informed the fact finding team during the field visit discussion<sup>28</sup> that they have skill oriented programs for *Musashar*,<sup>29</sup> and Home stay<sup>30</sup> in some areas but program coverage is very limited. This demonstrates that WWF has different priorities than to address the root cause of the problems faced by IPs in particularly displacement from their traditional homelands and the adverse consequences.

There is not a clear provision in the National Park Laws or in the Army a related law that says National Parks are under the protection of the Army. Article 267 (4) of the Constitution, 2015 however says *"the government of Nepal may also mobilize the Nepal Army in other works including development construction and disaster management works, as provided for in the Federal Law."* The National Security Policy 2016 also does not talk directly about national park protection under the army. Among others, Nepali Army has a responsibility to provide necessary help to protect national heritages (3.3.2.8). Despite these facts, over 8,000 professional troops of the Army of Nepal, trained in nature conservation, have till now been protecting 14 protected areas.<sup>31</sup> According to the official Website of Nepali Army information Nepali Army are involved in a mission to protect endangered species, Plants and the Natural Resources since 1975. Since then, the Nepali Army has been responsible for the protection of 12 out of the 22 protected forests. 12 Battalions and Independent Companies<sup>32</sup> with some 6,778 troops protect forest areas measuring some 9,767 sq km.

Following the rapid decline of rhinos, the government had established CNP in 1973 with special provision to conserve rhino and tiger. The Nepali Army was deployed in 1975 with strict orders to control poaching and land encroachment. The impact of the mobilization of the Army is very visible in the rhino census in the CNP.

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<sup>26</sup> See footnote 25.

<sup>27</sup> A focused group discussions was held in Bote community where representatives of Majhi, Bote, Derai, Kumal and other members were present.

<sup>28</sup> Based on discussion with the field project office of PABZ under TAL [field project office of WWF Nepal]

<sup>29</sup> See details at <https://www.worldpulse.com/community/users/megancowley/posts/67430>  
The Musahar community is an ethnic group that exists within the Dalit, or 'untouchable,' caste system and are one of the most disadvantaged and marginalized groups in the world. Despite attempts from the Nepal government to outlaw modern day slavery, caste-based bonded labour still happens in Nepal.

<sup>30</sup> See details at <https://blog.communityhomestay.com/staying-in-a-homestay-in-nepal-all-you-need-to-know/>  
A home stay is a private residence that offers accommodation to paying guests. There are home stays all over Nepal, some running independently, but most running as Community Home stays where families work together to host guests.

<sup>31</sup> Army Day Special: Nepal Army in Nature Conservation, Spotlight Online : [www.spotlightnepal.com](http://www.spotlightnepal.com)

<sup>32</sup> See details at <https://www.nepalarmy.mil.np/page/bpd>

The population of the Rhino was around 800 in the region of CNP, before the National Park was set up in 1950, and still it has not reached to meet this data. It came down to 95 in 1960 and rose up in 1978 to 310. According to Nurendra Aryal, assistant conservation officer of the park, there were 358 rhinos in the first census in 1988. The number reached 446 in 1998 and 544 in 2000. The population later declined to 372 in 2005. There were 408 rhinos in 2008, 503 in 2011 and 605 in 2015. CNP has recorded a rise in the number of the rare one-horned rhinoceros in the area. This resulted in gradual recovery of the rhino population which was once as low as 95, now reached and stands at 605.<sup>33</sup> According the report of Rhino Conservation in Nepal's Chitwan National Park, today there are about 650 rhinos spread over different National Parks: about 600 in Chitwan National Park and the other 50 scattered across the Parsa Wildlife Reserve, and Bardia and Shuklaphanta National Parks.<sup>34</sup>

Conservation initiatives and human rights are not intrinsically opposed. There is mounting evidence that conservation based on respect for the rights of ancestral owners of the territories and lands of IPs is more effective than exclusionary PAs. For example, the CNP has been established in the Chitwan valley which was once home to the Tharu, Bote, Darai, Kumal and Majhi. They have lived in the in the region since the time of immemorial, and have a rich cultural history tied to the jungle and physical location of Chitwan. The customs, spiritual beliefs and moral values IPs are closely linked to the natural environment and their ancestral land. IPs protected the wildlife and natural resources for the time of immemorial and once the CNP was declared and expelled IPs from their ancestral territories, started to decreasing 8 times lower the figures of rhino population in 1960s in comparison to the historical point of view where IPs of that CNP areas had secure their lands and natural resource rights. This fact clearly indicates the close relationship between the IPs and biodiversity conservation.

The Objectives of CNP are as follows:<sup>35</sup>

- (a) Management and protection of wildlife and resources and control illegal poaching of endangered animals,
- (b) Protection, improvement and management of habitats and water ecology for wildlife;
- (c) Contribute through eco- tourism, towards economic and social development of local communities,
- (d) With people participation in biodiversity protection and management to make conservation sustainable.
- (e) Maintain co-existence between human and wildlife by developing the ownership of local people to wildlife.

## 2.2. National Parks and Wildlife Conservation (NPWC) Act

The NPWC Act, 1973 is the legal basis of establishment to the CNP. The regulations to the Act were formulated in the following year. The Act has broad objectives: *to make practical arrangements for the management of national parks, conservation of wildlife and their habitat, regulate hunting and to conserve, promote, develop, and make appropriate arrangements for and the use of places which are of special importance from the point of*

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<sup>33</sup>[Number of one-horned rhinoceros on the rise in Chitwan National Park](https://thehimalayantimes.com/nepal/number-one-horned-rhinoceros-rise-chitwan-national-park/), published by Himalayan News Service, March 25, 2017. Available at <https://thehimalayantimes.com/nepal/number-one-horned-rhinoceros-rise-chitwan-national-park/>.

<sup>34</sup>See the Inside Himalayas. Available at <https://www.insidehimalayas.com/rhino-conservation-nepals-chitwan-national-park/>.

<sup>35</sup>Annual Report (2075/076), Chitwan National Park Office, Kasara, P. 3 Available at <https://www.chitwannationalpark.gov.np/index.php/document-repository/publications-chitwan-national-park/53-cnp-annual-report-2076/file>.

*view of natural beauty and to maintain good manners and welfare of the general public* (Preamble of the Act). The GoN with publication of a notice on Gazette can declare a national park, wild reserve or protected areas (Sec. 3). The absolute legal authorization of the government to establish national parks provides very limited or almost no space for the affected people to raise their voice. For example, IPs were ignored while establishing CNP and suddenly deprived from rights over natural resources that they had used, controlled and exercised sustainably traditionally.<sup>36</sup> The Royal Nepal Army (now the Nepal Army) established barracks within the Park and was given sole responsibility for law enforcement from 1975 onwards. A 'rhino patrol' became responsible for the protection of rhinos outside the park.<sup>37</sup>

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<sup>36</sup> Neupane, Chhabilal and Majhi, Chitra Bahadur, Samrakchhit Chetra ka Dwanda, (Conflict of Conservation Areas) Chitwan Rastriya Nikunja Prabhawit samudayaharuko Adhyan. Majhi Musahar Bote Kalyan Sewa Samiti, Nawalparasi and Prabhat Kiran Sewa Samaj, adhyan samaya 2072 Paush 30 dekhi 2073 Kartik 30 samma

<sup>37</sup> See footnote 13.

## CHAPTER-3

### KEY FINDINGS ON HUMAN RIGHTS VIOLATION AND ABUSES AGAINST IPS

#### 3.1. Killings

The Constitution of Nepal guarantees the fundamental right to life with dignity.<sup>38</sup> No law shall be enacted to reward capital punishment.<sup>39</sup> In contrast, the NPWC gives special power to open fire as a resort for self-defense, in case of death of offender or accomplices as a result of such firing, it shall not be deemed to be an offense.<sup>40</sup> No legal action is taken against the officers who are involved in killing. This legal provision is not only inconsistent with art. 16 of the constitution- 2015, more importantly, this encourages extrajudicial killings, gross human rights violation, tortures and creates insecurity for those IPs who have no alternative other than natural resources of the Park for their survival. IPs living in CNP areas expressed their fear to talk about human rights violations created by Park authorities and army. People fear that discussion of Sikharam's case (see section 3.1.1) may create problems for his family if the case is re-opened or whatsoever action is taken in this regard. People have clear objections against the patrolling of the army with arms that is happening in the village. People are terrified with army patrolling, that they do sometimes routine basis and sometimes randomly however they do it daily basis. This limits freedom of speech, movement and association that guaranteed under article 17 of the Constitution of Nepal, 2015.

##### 3.1.1. A case of death after alleged torture in CNP

The Section 29 of the then Criminal Case Act, 1991 permits withdrawal of a criminal case by the government prosecutor in accordance with the decision of the Government (Ministry of Council). In this situation, a Criminal case or Charge will be dismissed and the accused or the perpetrator is freed from the case. Referring to this provision the Cabinet decided to withdraw the case against three park officers who were involved in brutal torture that caused the death of Sikharam. A local leader (whose identity is known to the researchers) expressed his disappointment with the Government, who claimed that the withdrawal of the case was to boost up the morale of park's officers, that is such a strange argument. He further informed that no consent was obtained from relatives of Sikharam as prescribed by the law.<sup>41</sup> The Criminal Case Act was superseded by Criminal Procedural Code, 2074 and the sec. 116 (2) of the Code that permits Government to withdraw criminal case that was under the consideration of the Court. With some exceptional cases<sup>42</sup>, the government can withdraw a criminal case by issuing Directives.<sup>43</sup> The new code does not permit to withdraw a case which is *sub judice* in appeal level.<sup>44</sup> It is a general rule that government cannot withdraw criminal case that is pending in the Court. Meaning to say, it was clearly arbitrary decision of the government.

A year-long investigation of the BuzzFeed News and The Kathmandu Post claims that in the area of the CNP a Ranger guard in the forest area, tortured Shikharam Chaudhary, to

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<sup>38</sup> Article 16 of the Constitution of Nepal, 2015

<sup>39</sup> Ibid.

<sup>40</sup> Sec. 24(5) of NPWCA Act, 1973

<sup>41</sup> Interview with a leader (Name undisclosed) during the preparation of this report.

<sup>42</sup> Section 116(2) (a) and (b)

<sup>43</sup> Section 116 (3)

<sup>44</sup> Section 116 (8)

such an extent that he died as a consequence of his severe injuries<sup>45</sup>. Shikharam had been suspected of illegal poaching by the Rangers. They claim that he helped his son bury a rhinoceros horn in his backyard but they could not get it during their search. In contrast, Shikharam's wives (Khurani Chaudhary and Hirmotia Chaudhary), son, neighbors and villagers outright reject the allegations against Shikharam. According to neighbors Shikharam was a very honest, sincere, trusted person, very cooperative and a good conciliator during any disputes in village. He had no record of evidence in breaking any laws nor had he faced any charges in any offences or misdemeanor.

According to Shikharam's wife (Hiramotia Chaudhary), he was arrested like a kidnapping while he was returning home after a whole day of work in his field. When Shikharam did not return home, his family and neighbors searched for him all night. His wife was informed after 3 days that he was kept in custody in the Kasara detention Center. The park officials did not allow anyone to meet Shikharam. After several requests to the Park officials, by Hiramotia, she was given an opportunity for a short while to meet Shikharam and see his face. Park officials had blatantly tortured his mouth and different parts of his body. His mouth was completely swollen and it was hard to recognize his face due to the merciless beatings. According to Hiramotia, she noticed the grievous hurts on Shikharam's face. She asked him who did it and Shikharam told her that Kamal Jung Kunwar (one of perpetrators) had beaten him.

The BuzzFeed and Kathmandu Post article, which goes into detail about what they discovered as part of a yearlong investigation and its assertions, match our understanding of the events.

Hiramotia later told the police. "Shikharam was in too much pain to swallow. He crawled toward Hiramotia, his thin body covered in bruises, and told her through sobs that forest rangers were torturing him. "They beat him mercilessly and put saltwater in his nose and mouth,"<sup>46</sup>

Hiramotia, told the Post her husband suffered from no ailments and was in good health when he was picked up by the rangers. She said Shikharam even named Kunwar, the assistant warden, as one of his torturers when she went to visit him at the detention centre.<sup>47</sup>

"His mouth was so swollen, he couldn't eat the food I had brought for him," she recalled.<sup>48</sup>

Following Shikharam's death, his fellow inmates told the police that they had witnessed multiple guards—some with "alcohol on their breath"—repeatedly beating him throughout the week. They also said Shikharam complained about, and showed other inmates, his bruises and injuries. Many of them also claimed they were beaten by the same guards.<sup>49</sup>

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<sup>45</sup> See the details of tortured a Shikharam Chaudhary to death in the news report by Warren, Tom and Baker, Katie J.M. (March 4, 2019). WWF Funds Guards Who Have Tortured and Killed People, BuzzFeed News. Available at <https://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death>

<sup>46</sup> *ibid*

<sup>47</sup> See the detail news report by Tsering D Gurung (March 3, 2019). Nepali park officials tortured a man to death. Then, the government and the World Wide Fund for Nature rewarded them. An investigation report by The Kathmandu Post. Available at <http://kathmandupost.ekantipur.com.np/news/2019-03-03/nepals-park-officials-who-beat-and-tortured-a-man-were-rewarded-by-the-government-and-the-world-wide-fund-for-nature.html>

<sup>48</sup> *ibid*

<sup>49</sup> *ibid*

Shikharam repeatedly urged his wife (Hiramotia) in Tharu language to take him out from custody without further delay otherwise they would kill him and he was crying while making his plea to get released. The detention centre was very congested where 20 to 25 people were kept and no space to stretch out their leg and no place to move around. There was a very narrow place for releasing urine and discrete. The local villagers led a serious of demonstrations and protests demanding the release of Shikharam, but the authorities did not pay any attention to the demands and voices of the villagers.<sup>50</sup>

On the night Sikharam was taken to the hospital, by rangers, multiple inmates from Kasara said they heard Shikharam scream, wail and cry until he fell unconscious. Maniram Mahato, one of the witnesses, said he saw Shikharam “being thrashed against a bench and on the floor and when he fainted while they were beating him, four people lifted him and took him to the detention room.” Another inmate testified he heard guards say “the oldie has stopped breathing.”<sup>51</sup>

Hiramotia was informed to go to hospital, she went and inquired doctors and nurses about where Sikharam was kept and what his condition was, but the doctors and nurses refused to answer where and in what condition he was kept. At last, she was taken to a room where the dead body of Shikharam was kept. According to Hiramotia, his face was so swollen; he had bruises, seven broken ribs and severe beating marks were seen all over his body. Following this, there was a heavy protest from people and pressure from human rights organizations and journalists; it was only because of this fact that Shikharam's postmortem was done which shows the truth about Sikharam's dead due to brutal torture of the Park rangers.<sup>52</sup>

Their testimonies were substantiated by the autopsy, which determined the cause of death to be “excessive pressure applied on the back and left side of the chest which causes him unable to breathe.” The report also found “clear indication of physical violence”, noting he had blue marks and bruises on his lower back, several other bruises and “healing injuries” on his head, limbs, and chest. He had seven broken ribs and his entire left lung was black due to injury.<sup>53</sup>

Following the report's release, Shikharam's brother, Mangaram, filed a complaint with the police against three park officials: Chief Warden Tika Ram Adhikari, Assistant Warden Kamal Jung Kunwar and Ranger Ritesh Basnet.<sup>54</sup> Three park officials were arrested as the public protested in demand of taking stern action against the perpetrators.

The trio was charged with homicide and the district court issued an order for the three to be held in custody until the case reached its judgment. The defendants' appeal to the court order was rejected by the Appellate Court in Hetauda.<sup>55</sup>

In their statements to the investigators, all three denied having any role in Shikharam's death and claimed the farmer had died from natural causes.<sup>56</sup>

But multiple other witnesses and sources who spoke to the Kathmandu Post told a different story.

Chitwan-based activist Chabilal Neupane, said the chief warden had been made aware of Shikharam's deteriorating health condition days before his death.

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<sup>50</sup> Information provided by Hiramotia (Hiramotia testimony) as a key informant during fact finding mission.

<sup>51</sup> See the footnote 47.

<sup>52</sup> Interview with Hiramotia (Hiramotia testimony) during fact finding mission.

<sup>53</sup> See the footnote 47

<sup>54</sup> See the footnote 47.

<sup>55</sup> See the footnote 47.

<sup>56</sup> See the footnote 47.

In an interview with the Post, Neupane said that he, along with a group of activists and journalists, had visited Shikharam in detention and saw that his body was “completely swollen.”

“We asked the chief warden to stop torturing him and requested that Shikharam be taken to a hospital for treatment, but he just shrugged off our request,” said Neupane. “He told us it was necessary to put pressure on detainees during the investigation process.

Such facts show that Shikharam was innocent. Furthermore, the three park officials were convicted by the District Court and the Appeal Court confirmed that they had misused their legal authority. This was clearly a criminal matter, and that is why the perpetrators were detained.

There was a informal and verbal agreement in the Chief District Office (CDO), Chitwan that the government of Nepal would provide NRs 6,00,000 (\$ 5,240) and that CNP would provide NRs 400,000 (\$ 3,493) as compensation to the family of Shikharam. However, CNP has not yet paid the NRs 400,000 (\$3,493) to Shikharam's family. Shikharam's family was however never involved in the discussions and the agreement about the provision of such compensation. Hiramotia came to know about all this at that time when she was offered a cheque with the amount of NRs 600,000 (\$5,240) by the government of Nepal.<sup>57</sup>

Three park officials, assistant conservation officer, Kamal Jung Kunwar and Ranger, Ritesh Basnet including the chief warden, Tika Ram Adhikari, were arrested and charged with murder of Shikharam Chaudhary. The GoN, Ministry of Forest and Soil Conservation suspended them when they were taken into police custody after Shikharam Chaudhary's death.<sup>58</sup> Despite mounting evidence against the accused,<sup>59</sup> the Nepalese government intervened and ultimately withdrew the charges against the rangers of the accused killers in March 2007.

Five months after Shikharam's death, Lal Bahadur Tamang, 52, of Jagatpur-4 was found dead hanging inside a toilet of a Kasara detention centre on the premises of CNP. He had been arrested by the park authorities on November 11, 2006 on charge of killing rhinos. Acting conservation officer of the park, Ananath Baral, said Tamang's death was suicide since he was found dead hanging in the toilet the next morning. Tamang's family members were not convinced the death was a case of suicide, but a planned murder and demanded an investigation against the park administration charging them of torturing Tamang to death. The case was settled after the family of Tamang was offered compensation. The park administration handed over NRs 8,000 (\$70) to his family as expenses for last rites and no autopsy was done as prescribed by criminal offense act 2049 BS (1993 AD).<sup>60</sup>

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<sup>57</sup> Information provided by Hiramotia (Hiramotia testimony) as key informant interview during the fact finding mission.

<sup>58</sup> Cease the case (June 14, 2006). Narayanghat, Himalayan News Service.

<sup>59</sup> See the details evidence of investigation reports of BuzzFeed and The Kathmandu Post. Available at <https://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death> Available at <http://kathmandupost.ekantipur.com.np/news/2019-03-03/nepals-park-officials-who-beat-and-tortured-a-man-were-rewarded-by-the-government-and-the-world-wide-fund-for-nature.html>

<sup>60</sup> See the details in the Kathmandu Post. Available at <http://kathmandupost.ekantipur.com.np/news/2019-03-03/nepals-park-officials-who-beat-and-tortured-a-man-were-rewarded-by-the-government-and-the-world-wide-fund-for-nature.html>

See also in daily news paper, The Himalayan, (November 17, 2006). Man found dead in national park detention centre. <https://thehimalayantimes.co20m/nepal/man-found-dead-in-national-park-detention-centre/>

## 3.2. Mistreatment, arbitrary, detention and sexual abuse

### 3.2.1. Mistreatment and sexual abuse

When Rhino Protection areas were established from 2019-2021 BS (1962-1964 AD) people living in these areas were forcefully evicted from 12 villages.<sup>61</sup> When some refused to leave their village, twenty-seven women were raped. 27 women were raped, among of them that 6 were again repeatedly raped and killed by Army. Bifala Mahato one of a rape victims was killed with gunshot in front of her family in day time.<sup>62</sup> No action was taken against the perpetrators. People still remember this horrendous incident and the surviving families still live in fear.

Indigenous women's identity and existence and their entity are not recognized in the legal context of Nepal, they are also invisible under the Constitution of Nepal 2072 BS (2015 AD). In contrast, Indigenous women are not recognized nor entitled to any rights as distinct identity holders. Legally, Indigenous women are more vulnerable, voiceless and powerless than any other group, thus it is not a coincidence that a number of Indigenous women faced a high rate of sexual abuses in the area of CNP. Such incidences are routinely being occurred and information may not be disclosed by the victims for official records.

Section (219) of the Criminal Code, 1917 defines and punishes rape and statutory rape,<sup>63</sup> rape and marital rape. Rape is a criminal offense liable of imprisonment up to 20 years. Section (224) of the Criminal Code, 2017 states sexual harassment is an offense with imprisonment up to 3 years. Raping anyone who is under the protection and security of anyone is a crime with imprisonment of up to 3 years.<sup>64</sup> Despite of these legal provisions, rape, sexual abuse, harassment are rampant in CNP areas, according to key informants.<sup>65</sup> The research report record of 2067/68 BS [2010/11 AD) shows that 116 women and 173 children are victims who faced mistreatment and abuses.<sup>66</sup> Until 14 March, 2016, actions were taken against perpetrators in the cases of 23 women and 31 mistreated children.<sup>67</sup> The data shows that there is a huge gap in crime and punishment.

Mistreatment of women increases even more after harvesting time. This is the time they have to cross the Rapti River to collect firewood, vegetables and grasses where they encounter army personnel and they also face misbehavior and abuses by these.<sup>68</sup> The Bote communities build a strong movement against the mistreatment, sexual abuse and illegal detention. Harassment, sexual abuse and mistreatment against women are however continuing. The 2009 country report of the UN Special Rapporteur on the Rights of IPs identified multiple violations of rights in the National Parks of Nepal, including the "mistreatment, arbitrary detention and sexual abuse of Indigenous villagers", in particular "Indigenous women", by CNP rangers and military officials.<sup>69</sup>

On 30 April 2006, a group that includes 15 Kumal women from the BZ areas (Jogitole, Ward 2, Meghauli) went to Khoriya Army Post inside CNP to seek permission to collect wild

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<sup>61</sup> See the details name lists of villages in separate heading on violation of lands rights and displacement from conservation.

<sup>62</sup> Information provided by key informants from CNP areas during fact finding mission.

<sup>63</sup> Raping a girl under age of 18 even with consent is an offense of rape.

<sup>64</sup> Sec. 222 of Criminal Code, 1917

<sup>65</sup> Information provided by key informants from CNP areas during fact finding mission.

<sup>66</sup> See footnote 13.

<sup>67</sup> See footnote 13.

<sup>68</sup> Information provided by key informants from CNP areas during fact finding mission on 28 November 2019.

<sup>69</sup> Report on the situation of IPs in Nepal. See in details at A/HRC/12/34/ Add.3, 20 July 2009. Available at [nsr.jamesanaya.org/docs/countries/2009\\_report\\_nepal\\_en.pdf](http://nsr.jamesanaya.org/docs/countries/2009_report_nepal_en.pdf)

vegetables. The army took advantage of the occasion and these women were sexually harassed and they beat up nine of the women. The next day, six army personnel from the same post came to the village. Shanti Kumal, a local women's activist inquired about the incident and questioned the action of the Army. Why have you beaten Kumal women when they approached you seeking permission to collect wild vegetables? Have they committed a crime? The officer-in-command was enraged and said: *Are you a journalist, human rights activist, a leader of this village? How dare you question us?* Poor Indigenous women are often perceived as submissive and voiceless. Feeling insecure, Shanti Kumal took the help of an NGO she is affiliated with and afterwards, a press statement was released on behalf of Shanti Kumal condemning the incident and warning of a protest if a proper investigation was not conducted. When the matter was taken up by the media, it infuriated the army officers from Khoriya post. On 2 and 3 May, Army personnel from the post came to the village and threatened the villagers with dire consequences if they did not hand Shanti over to the army within three days. She had to escape from the village and take refuge in her relatives' house. On 4 May, in a press conference along with other victimized, she strongly protested against the behavior of the Army personnel and appealed for justice and security. Next day on 5 May, their appeal reached the House of Representatives and Rajendra Pandey, Member of Parliament, raised the issue in Parliament. Civil society leaders and human rights activists extended their solidarity to the plight of the women. On 8 May, in a program organized at Bharatpur, Chitwan leaders of a citizens' movement and senior human rights activists raised the issue and strongly protested against the Army's actions. Human rights organizations began their fact-finding mission. The fact-finding team conducted an investigation at Khoriya post. On 10 May, a public hearing was organized in Kathmandu at Martin Chautari. The national media too highlighted the issue. Though civil society pressure warned off the Army, no concrete actions were taken against the guilty.<sup>70</sup>

On May 12, 2012, a Tharu woman, who is named as Manmati Chaudhari was cutting grass on her field near the banks of the Rapti River. Three soldiers (Jamdar who is the Army personnel and two other soldiers) were at the same time returning to their post on the Belsar BZ community forest in CNP. The Jamdar attempted to rape her, when she objected he beat her up so badly that her kneecap was permanently damaged. A same woman said she had been cutting grass on her field near the bank of the Rapti River with some girls from her village. A soldier stepped on her hands, threw away her sickle, and pushed her into the bushes, where he ripped off her clothes. She accused the Jamdar for trying to rape her.<sup>71</sup> When she resisted, he beat her with a bamboo stick until she lost consciousness. "He began to hit my knees with a bamboo stick. He struck three times on my knee and then twice on my back. I fell to the ground. After I fell down, he stomped on my chest. He then hit my chest with a stick and punched me," the woman later recounted her ordeal in a book.<sup>72</sup> Jamdar didn't listen to what the other two soldiers said, although they urged the Jamdar not to do such a bad thing in pointing out to Jamdar that it would result in punishment for them for such wrong doing. The villagers saw the incident and cried out for why they did it.

After this they left her. Three days after receiving information about the incident, Indira Bote, a resident of Patihani and Chhabilal Neupane, the Chitwan-based activist and others took her to the hospital for treatment.

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<sup>70</sup> See footnotes 13 and 76.

<sup>71</sup> See the details of BuzzFeed News. Available at <https://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death>

<sup>72</sup> See the details of BuzzFeed News. Available at <https://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death>

The Nepal Army provided her with 30 kg rice, 10 kg potatoes, 5 kg Dal (bean) and paid her NRs 5,000 (\$44) as compensation and she was told to hush up. Until the date of interview, she is not able to walk normally due to the beating of the Army. She is in such a miserable condition that she is not only suffering with the problem of her fractured knees, but also suffering because as her husband also got paralyzed due to the cause of his own personnel matter. Both are living in a way that is not appropriate from the perspective of safety since they have been leaving in temporary house which look like as domestic animal shed.<sup>73</sup> She got informed that perpetrator was punished by being expelled from his existing service. However, there are no proofs in this regard.

The soldier was arrested, and a park-affiliated committee tasked with improving local relations stepped in. The woman and her family told BuzzFeed News that she was pressured not to press charges against the soldier. "I didn't get justice," she said. Her knee is still so damaged that she's unable work. "I am still suffering," she said. The sexual assault made national headlines. Despite WWF's deep involvement with CNP and its commitment to protect IPs from abuse, no one from the charity ever met with the woman to discuss the attempted rape, she said. Few months later of the same year, the battalion that the soldier who involved in the incident belonged to received an award <sup>74</sup> from WWF for playing a crucial role in combating rhino poaching in Nepal.<sup>75</sup>

Local women activists and fisher-folk reported incidences of sexual harassment and rape. One incident that attracted some public attention took place in Daldaley where Army personnel had harassed fishing women.

A women fisher folk, Hira Kumari Majhi, from Pithauli Village Development Committee (VDC)-6, Nawalparasi, gave a painful yet bold recitation during a public hearing at the capital city. "My aunt was in her second day after childbirth. Male members of the family had already left for fishing in river Narayani. At around 12 midnight, four soldiers from the CNP intoxicated with alcohol came to the hut and raped her. If such incidents are reported, they threaten to kill us with their guns. How long do we tolerate such brutal torture?" An incident of harassment of local Kumal women from Meghauri, Chitwan received much publicity.<sup>76</sup>

Local communities around the PAs of Terai have received reports many incidences of sexual harassment and rape by the members of the Army. Such incidences are not officially reported to the authorities due to the stigmatization of victims of sexual harassment that affects women's social identity. The voice and suffering of local women are often suppressed and concealed within the family, if not all together disappearing amidst the bushes and forests. Locals have reported unmarried victims of rape facing troubles later in their married lives, and married victims of rape abandoned by their spouses.<sup>77</sup>

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<sup>73</sup> Information provided by interview with the victims during fact finding mission on November 26, 2019

<sup>74</sup> Abraham Conservation Awards: Organization. See in details in the Kathmandu Post. Available at <http://kathmandupost.ekantipur.com.np/news/2019-03-03/nepals-park-officials-who-beat-and-tortured-a-man-were-rewarded-by-the-government-and-the-world-wide-fund-for-nature.html>  
Nanda Box Battalion, for playing a crucial role in achieving Zero Poaching Year for rhinos in Nepal and being in the forefront in capturing wildlife criminals, arms and wildlife parts for more than a decade time. See the details in <http://www.wwfnepal.org/?206267/Awarding-Conservation-Excellence-in-Nepal>

<sup>75</sup> See the details of BuzzFeed News. Available at <https://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death> and The Kathmandu Post. Available at <https://kathmandupost.com/investigations/2019/03/03/nepals-park-officials-who-beat-and-tortured-a-man-were-rewarded-by-the-government-and-the-world-wide-fund-for-nature>

<sup>76</sup> Jana, Sudeep (2007). Voices from the margins. Human rights crisis in protected areas in Nepal. Available at [file:///C:/Users/Admin/Downloads/Article-PolicyMatters15%20\(1\).pdf](file:///C:/Users/Admin/Downloads/Article-PolicyMatters15%20(1).pdf)

<sup>77</sup> ibid

Locals in BZ villages have reported that soldiers have indulged in violations in sexual harassment. A recent study learned from local communities that those captured had faced different forms of Army punishment of sexual harassment. These include: 'Forced to touch each other's sex organs, punished if refusing', 'Making women dance naked', and Making men strip in front of women and sending home', Touching and pointing at the women's private parts and harassing them.<sup>78</sup>

Women have reported being sexually harassed by the Army in the past as well as present scenarios in Dibyapuri and around the other villages of CNP. A group of women described an incident that happened while they were fishing from the river bank at Dibyapuri village. They said that Army personnel harassed them taunting: " *Even I possess fish! Would you like to fish?*" (Ma sanga pani cha bhoti! Marchash?) When the women became angry, the Army personnel snatched their baskets, threw them in the river, and chased the women away.<sup>79</sup>

Along with the concept of establishing a park and relocating the 13 settlements<sup>80</sup>, crimes against women such as sexual abuse, sexual violence, and vandalism were found to occur. Illegal and highly brutal behavior was seen from government at that time, such as the shooting of Bifala Mahato in front of his family while evacuating the local villages and settlement and the rape of 27 women in front of their husbands and guardians. In addition, the local community still remembers the incident of rape of 6 Indigenous women who were stabbed to death at night entering the house as they blamed that it was disclosed the news of rape to the public.<sup>81</sup>

### **3.2.2. Harassment against Indigenous and local women rights defenders**

A group of girls including Shati Maya Kumal were asked to compete in a swimming contest with Army personnel, and then only they were allowed to collect *Badar* (wild vegetables). Men were not asked to do so. This kind of harassment is only done to women in leadership positions. This is an example of the injustice created by CNP. Shanti Maya is a community rights defender as well as women activist. There are huge problems of harassment and abuses against women activists from army personnel.<sup>82</sup> There are other ways to discourage activists to defend women and community rights; the swimming contest is only one example out of many. They are accused of jeopardizing community peace, or for provoking people with unnecessary matters.<sup>83</sup>

### **3.2.3. Harassment of local people**

#### **3.2.3.1. Seizing of goods**

Park officials and army personnel often snatch Boats and fishing nets from locals when they go fishing in Rapti River. This happens routinely in seasonal basis whenever villagers enter in to forest and go to river near to their village. Boats and fishing nets of local IPs are seized by Army and it was never given back to them. Sometimes local peoples have to give their fish to them, otherwise they face problems i.e. they are arrested or physically tortured.

IPs frequently faces false accusations such as using 'maha jaal' (larger nets with smaller weaves-'Tiyari Mahajaal')<sup>84</sup> even though they never use it. It is outsiders or hotels who use

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<sup>78</sup> *ibid.*

<sup>79</sup> See footnote 13.

<sup>80</sup> Relocated 12 settlements are as follows: 1. Khorivan, 2. Bhimle, 3. Bagamara, 4. Sukebhaar, 5. Khorshor, 6. Harwaas, 7. Materi, 8. Baanswaari, 9. Pipara, 10. Japka, 11. Khatua, 12. Jagadhari.

<sup>81</sup> Neupane, Chabilal. Yathartha Ghatnama Adharit Nakawandhima Wasti.

<sup>82</sup> Information provided by a key informant during fact finding mission.

<sup>83</sup> Information provided by a key informant during fact finding mission.

<sup>84</sup> A large net with small with a small weave.

this kind of maha jaal but army and park official blame the Bote, Majhi, Kumal, Tharu and Darai.<sup>85</sup> Army personnel harass local communities by confiscating items such as sickles, axes, fishing nets, dhadiya (baskets), oars, and sometimes even boats accusing illegal entrance. Even individuals with licenses, are interrogated and have to face falls charges. Receipts are not given, nor are charges laid.<sup>86</sup>

### **3.2.3.2. Involuntary work<sup>87</sup>**

Members of marginalized communities report being exploited by the army as unpaid labor. They are forced to do work such as cleaning army camps, clearing paths, cutting logs, collecting vegetables, and fishing for the army without pay. The information was provided by key informant representation from Bote and Majhi people in the field of CNP and no research of this type has been conducted to till the date. They are asked to collect and supply firewood. In the recent past, Bote and Majhi from Dibyapuri village supplied one tractor load of firewood to the army post nearby. If they resist demands for labor or supplies, they are verbally abused, threatened, and even beaten by army personnel, who also generally belong to more privileged castes/social groups.

### **3.2.3.3. Verbal abuse/ Slandering<sup>88</sup>**

In the early years of RNA deployment in the CNP, the local people did not fear them. Their main conflict was with the Park authorities, according to local interviewees. This initial perception quickly changed when cases of harassment and abuse became more frequent. The abuse has increased since the fisher communities organized resistance.

### **3.2.3.4. Physical abuse and torture**

If suspected of violating a park law (i.e., fishing or collecting), the army authorities do not allow explanations. Instant judgment and sentencing is commonplace and routine. There is no chance of respecting justice principle such as presume innocent until proven guilty, which is guaranteed under article 20 of the constitution of Nepal, 2015. Torture and physical harassment are the most preferred methods of subduing local people. Beatings with sticks are common. People report being forced to lie on the grass covered in sugar to invite ant-bites. In the summer, they are forced to lie on their bare back on a hot rock and are beaten under the hot sun. In the winter, they are forcibly submerged in ponds. Interviewees reported that local people have been forced to return from the park to their villages naked.<sup>89</sup>

Locals in BZ villages have reported that soldiers have indulged in violations that range from seizure of property and food, forced labor, and verbal abuse to physical torture. According to the Jana, S. (2007), local communities told that those captured had faced different forms of army punishment. These include 'Dunk in the Water', 'Batter with rough stick', 'Tied up upside down', 'Forcing to lay on mud exposed to blazing sun', 'Kicked with boots', 'Held in custody', 'Fined unreasonable amount', 'Made to stand still on water', 'Forced to run in awkward positions and physically assaulted if failing to do so', 'Made to run in water', 'Made to run with elbows with ground', 'Pulling the skin of the stomach and beating', 'Forced to eat one's own spit', 'Forced to sing and dance', 'Snatching the fish catch', 'Breaking the boats', 'Abandoning the boats in the river', 'Putting sugar on the body and forcing to lay on the ground in the sun', 'Seizing axe and sickle', 'Chasing with elephants', 'Tying hands with shoe laces and throwing in the river', 'Dunking in cold water for hours', 'Made to sleep on the

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<sup>85</sup>Information provided by focus group discussion during fact finding mission.

<sup>86</sup>See footnote 13.

<sup>87</sup>See footnote 13.

<sup>88</sup> See footnote 13.

<sup>89</sup> See footnote 13.

ground and sent home without a chance to wash', and 'Spilling hot water on the body'.<sup>90</sup> The pattern of such torture demonstrates CNP is in the place of human brutal torture ground. Around the areas of CNP still reporting the same kind of incidences like human rights abuses but physical torture has been decreased. It has been happening for at least 12 years. But there is no guarantee this would not happen again in the future.

### **3.3. Problem of Statelessness and violating the right to citizenship**

A national daily, Kathmandu Today in April, 26, 2018 published data<sup>91</sup> referring to Madhyawarti Chhetra Janadhikar Mahasangh (BZ Peoples Movement Federation) showing that 27 out of 116 women got justice (obtained citizenship card) after having children from relations with unidentified army personnel around the areas of CNP. Many women became pregnant due to rape and sexual harassment while entering into CNP to collect grass, fire woods and foods. Still 89 mothers and their 140 children still have not received citizenship cards. Thus, these people are living in a stateless situation with no civil or political rights, facing multiple discrimination and problems such as acquiring education, access to government services, acquiring property and more seriously they are living in extreme insecurity as well as poverty etc.

Article 10 of the Constitution of Nepal, 2015 states no Nepali citizen shall be deprived of obtaining citizenship. The article (11.5) of the Constitution, 2015 states, a person who is born in Nepal from a woman who is a citizen of Nepal and has resided in Nepal and whose father is not traced shall be provided with the citizenship of Nepal by descent.

The data shows that 86 Indigenous, 14 *Dalits* and 16 other community women are victims of statelessness. Despite of the Constitutional provision these victims are still deprived of obtaining citizenship cards.

In villages around CNP, more than 30 women claimed that their children have been born out of rape or illicit relationship with army personnel. An unpublished study by Community Development Organization (CDO), an NGO advocating the rights of local communities around PAs in Nepal reveals that Nepal Army deployed in CNP has fathered 37 children in Meghauri alone, a BZ village. CDO activists claim to have discovered around 65 such victims around CNP in Meghauri. Children raised under such circumstances face serious challenges in Nepal. Until recently, these children had a difficult time acquiring citizenship as well as birth certificates because of the practice in Nepal of giving citizenship based on name of the father. Locally, these children are accepted and called "Gana Bahadur" (Boy child) or 'Gana Kumari' (Girl child). In Ayodhyapuri, another village, 9 women were deserted by army personnel deployed at Bagai Army Post of CNP in the period 1995-2005. Cases of local women abandoned by army personnel are rampant in nearby villages around CNP.<sup>92</sup> There are two issues relating to abandoned children and mothers respectively: children who were born with relationship with the army persons or born out of rape, however it is hard to get disaggregated data and information due to the privacy matter.

Dhan Bahadur Praja is local resident who represents from Chepang IPs, that he obtained citizenship by birth and his wife Sita Maya Praja hold citizenship by descent, however their son was denied of obtaining citizenship due to status of his father's citizenship. He was asked to provide grandfather's citizenship to prove citizenship by descent. This is the problem of IPs living in CNP area.

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<sup>90</sup> See footnote 76 cited in CDO et al., (2006).

<sup>91</sup> <http://kathmandutoday.com/2018/05/315367.html> visited 27 October, 2019.

<sup>92</sup> See footnote 76. Such Buffer Zone villages include Gardi, Baghauda, Kalyanpur, Patihani, Sukranagar and Jagatpur.

Lila Bote got married to a man deployed by the army. He told her, he was unmarried, but later revealed that he has another wife. Her husband did not register their marriage and date of birth of her son. She was tortured and abused many times when she asked to get legal papers of marriage and birth certificate. She filed a case against her husband and the case is postponed at the moment. Due to poverty and costly procedure of court and hiring lawyer, she left the case.<sup>93</sup> There is a serious lack of access to justice for Indigenous women in many ways. The army doesn't respect the dignity of women around the park areas as our interviews with Indigenous women show. Women have to face verbal abuses and slandering cases on routine basis. The patrolling of the army in the villages, BZs terrify the local people especially the women. Women from Indigenous communities are victimized more than dominant groups (Khas Arya<sup>94</sup>).<sup>95</sup> During the interview with informants, it was revealed that dominant women are victimized rarely. They do not need to enter into CNP areas for livelihood purpose. It is one of the area need further research to get more detail.

### **3.4. Violation of lands rights and displacement from conservation**

The NPWCA, 1973 is not mentioning anything about compensating land that is acquired while establishing Protected Areas. In such case, the Land Acquisition Act 1974 triggers and the government have to provide compensation (Muabja and Chatipurty). In case of loss of land of local residents located in BZs within the boundary of the national park or reserve as a result of flood or landslide, and if such inhabitant's house is destroyed, the concerned national park or reserve, on the recommendation of the user committee formed under Section 16c, shall pay a reasonable compensation to him\her from the amount allocated for community development under Section 25a. (Sec. 3 (c) of NPWC Act, 1973). The present Constitution guarantees the right to property as a fundamental right (Article 25) and the former Constitution of Nepal-1962 has a similar provision relating to property rights and the constitution was in practice when the Soil and Watershed Conservation Act, 1982 was enacted. Section 8 of the act provides compensation to the private land used for the purpose of protection for Water shade. The existing Land Acquisition Act, 2034 requires providing compensation to the acquired private property for public purpose; however no compensation provided for people who were displaced from CNP. Since Nepal is a party to the ICERD, 1969 the 23<sup>rd</sup> General Recommendation has a provision for restitution or fair and just compensation to those lands of IPs taken without prior consent. However, there is a slim chance of bringing a Writ Petition against displacement due to doctrine of *laches* that is strictly followed by the Supreme Court of Nepal. Meaning to say, it is likely to dismiss a complaint if it is brought in front of the court since the establishment of CNP has been already a long time. More importantly, the ongoing effect of displacement is still continuous, till the date of today, which might be a cause to bring a Writ Petition for legal remedy.

In 2009, the UN Special Rapporteur on the Rights of IPs identified that the CNP was established in 1973 AD in areas traditionally used and inhabited by the Tharu, Majhi, Bote, Kumal and Darai and other communities who were displaced to the park's BZ. Even though these communities now enjoy limited access to fishing and other traditional occupations, per some preferential arrangements made by the local authorities, many individuals displaced from the park area remain landless and have not been provided alternative livelihoods or compensation. The reason why, for survival they are compelled to enter into CNP and some

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<sup>93</sup> Information provided by a key informant (Lila Bote) during fact finding mission.

<sup>94</sup> Chetri, Bahun, Thakuri, Dasnami Sanyasi are constitutionally identified as Khas Arya group who are dominant in every state structure since formation of state back to 250 years.

<sup>95</sup> Information provided by focus group discussion in Bote Tole WN. 22, in 27 October 2019

go for daily wages as seasonal workers. The displacement of local communities is another problem of environmental justice posed by the establishment of PAs.<sup>96</sup>

However the history of the relocation before the establishment of the park has not been entirely recorded, but according to some literature, it is recounted that it was a very violent process. When the first PA was established in Chitwan, Tharu IPs were forcefully evicted from their traditional lands, denying them their rights to own land and thus forced into a situation of landlessness and poverty. When the CNP was designated, Nepalese soldiers destroyed the villages forcibly removing all the villages located inside the designated boundary of the park, houses were burned down, fields and houses were trampled by elephants and beat the people who tried to plough their fields, men women and children of Tharu people were threatened sometimes at gunpoint to leave.<sup>97</sup> Those who lived inside the boundaries tried to fight for their land, but lost and as a result became landless for life.<sup>98</sup>

A large number of Indigenous villages were displaced while establishing CNP. It is estimated that about 20, 000 Tharu people were relocated from their traditional lands for conservation reasons.<sup>99</sup>

According to Shankar Kumar Ojha, who was displaced from *Khoriaban* village inside CNP and relocated in meghauli-1, Laukhuri, there were 13 villages inside the CNP were relocated: 1. Khoriaban, 2. Bhimle, 3. Bagamara, 4. Sukebhaar, 5. Khorshor, 6. Harrwaas, 7. Materi, 8. Baanswaari, 9. Tilkane, 10. Pipara, 11. Japka, 12. Khatua, 13. Jagadhari and whose inhabitants were promised Land compensation. However, the IPs have never got compensation from 12 VDCs except of Tilkane village. However, In the Tilkane area was a settlement of another village named Padampur. There were not many households in the four settlements in Jagdhari, Khatuwa, Pipra and Japka, but there were many households in the other eight settlements with cultivated land of about five *bigha* which is equal to 3.39 hectares to twenty-five *bigha* which equals 16.94 hectares for each household. Padampur area settlement has been shifted to Jutpani after 2048 BS (1991 AD).<sup>100</sup> There were many conflicts between the villages in Padampur and soldiers. The soldiers seized some village land, but the people continued to resist. When the soldiers seized the land, the local people tried to plough their fields, but were badly beaten by soldiers. Land in New Padampur has been distributed according to a system of land registration. Each relocated family in New Padampur is entitled to a maximum of two *bigha* of land, which is equal to 1.36 hectares. If families owned more land, they are entitled to receive monetary compensation. If families owned less than two *bigha* they are entitled to receive the same amount of land owned in Padampur. Landless families relocating to New Padampur are entitled to three *khatta* (land measurement unit) of land, which is equal to one tenth of a hectare.<sup>101</sup>

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<sup>96</sup>Report on the situation of Indigenous Peoples in Nepal. See in details at A/HRC/12/34/ Add.3, 20 July 2009. Available at [nsr.jamesanaya.org/docs/countries/2009\\_report\\_nepal\\_en.pdf](http://nsr.jamesanaya.org/docs/countries/2009_report_nepal_en.pdf)

<sup>97</sup> From Wikipedia, the free encyclopedia. Available at [https://en.wikipedia.org/wiki/Chitwan\\_National\\_Park](https://en.wikipedia.org/wiki/Chitwan_National_Park) and Chitwan National Park: a violent conflict on resource use rights in Nepal. Cited in Joanne Mclean (1999) Conservation and the Impact of Relocation on the Tharus of Chitwan, Nepal, in HIMALAYA, the Journal of the Association for Nepal and Himalayan Studies. Available at <https://ejatlas.org/conflict/chitwan-national-park-nepal-a-resource-use-rights-conflict>

<sup>98</sup>Joanne Mclean (1999) Conservation and the Impact of Relocation on the Tharus of Chitwan, Nepal, in HIMALAYA, the Journal of the Association for Nepal and Himalayan Studies. Available at <https://pdfs.semanticscholar.org/65d8/ef81359ed444ac142d01699d3c3a957b1668.pdf>

<sup>99</sup> Chitwan National Park: a violent conflict on resource use rights in Nepal. Cited in Mongabay, 'Behind rising rhino numbers in Nepal, a complex human story' Author: Alex Dudley, July 19, 2017. Available at <https://ejatlas.org/conflict/chitwan-national-park-nepal-a-resource-use-rights-conflict>

<sup>100</sup> See footnote 13.

<sup>101</sup> See footnote 97.

The locals were promised of providing land as compensation, but many have never got it.<sup>102</sup> Some non-Indigenous 55 HHs went to Banke, Bardiya afterwards and received the 2 *bigha* of land,<sup>103</sup> which is equals 1.36 hectares each. Elites (those who were non Indigenous) were successful in taking at least 4 *bigha* land, which is equals to 2.70 hectares during the land survey time in 2026 BS. (1970 AD), but the majority of IPs did not receive anything at that time. Bote, Kumal, Tharu and Darai were not moved away for resettlement during this period. Most of them have been found living and resettled near the Rapti, Rewa, and Narayani rivers later. There the situation is that some of the land has not been surveyed and no land ownership certificates have been provided.<sup>104</sup>

In the process of establishing CNP, IPs who have been relocated, have not received any compensation. That kind of injustice continues to happen in the present context as well. There are 12 villages displaced and no resettlement, rehabilitation nor compensation was provided to those who were displaced till today.

### 3.5. Loss of traditional livelihoods

Article 51(j) (8) of the Constitution of Nepal, 2015 says "IPs have right to live with identity and dignity, they have right to participate in the decision making process that concern them" The country report, 2009 of the UN Special Rapporteur on the Rights of IPs heard from members of various communities who were prevented from gathering food, medicinal herbs and firewood from the park area, which severely limits their livelihoods based on subsistence economies.<sup>105</sup>

The state-imposed exclusionary conservation policies and practices disregard the dependency of local IPs on, and their relationship with, livelihood resources in the forests and rivers. These policies and practices jeopardize the deep socio-ecological and cultural relationship of the people with other components of the ecosystem. The alienation of local communities from their customary practices of resource usage and management and the denial of their usufruct rights has resulted in serious livelihood crisis. The interventions have far-reaching implications for both the social ecology and livelihood strategies of IPs living in the BZ area of CNP and they seriously limit the autonomy and freedom of the Tharu, Bote-Majhi, Darai and Kumal IPs. The ways in which the rights of the IPs have been eroded are discussed below.<sup>106</sup> Manoj Shah-Project Manager, PABZ projects, which are being jointly implemented under the TAL Program by WWF and DNPWC told that they are promoting alternatives activities for livelihoods so that local people's dependency on natural resources will be reduced.<sup>107</sup>

BZUC of BZ in CNP provided five Auto-Rikshaws<sup>108</sup> to Botes for alternative livelihoods but that is not culturally friendly/appropriate as well as economically viable. For example, it was a loan that was given to the Bote to buy Auto-Rikshaws—they needed to pay back the loan. According to community members it turned out as an ultimate debt trap to Bote who got the Rikshaw loan. They failed to earn sufficient income to pay the interest and loan back. They don't have skills to compete with others who are already established in the transportation

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<sup>102</sup> See footnote 80 (Relocated 12 villages)

<sup>103</sup> Officially, most measurement of lands use units of either Bigha (in Terai region), In Nepal, where a Bigha is about .677263 hectare.

<sup>104</sup> See footnote 81.

<sup>105</sup> Report on the situation of IPs in Nepal. See in details at A/HRC/12/34/ Add.3, 20 July 2009. Available at [nsr.jamesanaya.org/docs/countries/2009\\_report\\_nepal\\_en.pdf](http://nsr.jamesanaya.org/docs/countries/2009_report_nepal_en.pdf)

<sup>106</sup> See footnote 13.

<sup>107</sup> Based on discussion with the field project office of PABZ under TAL [field project office of WWF Nepal]

<sup>108</sup> Information provided by focus group discussion in Bote Tole in CNP Buffer Zone area.

business. Some have no drivers-license, so they have to pay fines that are equal to more than their income from 4 days when traffic police caught them.<sup>109</sup> There are 96 households of Bote community, and only five Auto-Rikshaws were provided, thus not every household got a Rikshaw. Additionally, there are couples of places where Home stay<sup>110</sup> were initiated to provide an income for the community which is also viable business for local people.

According to informants, snail (*ghongi*), fishes and wild vegetables are a priority for tourists but CNP often prohibits getting these foods, so it is challenging for the community to make a living from the tourism that is attracted by the park. In contrast, Hotels around CNP openly advertise the availability of such types of foods and they are allowed to keep boats and fishing. Thus they seem to have special privileges from the CNP authorities. Importantly, we asked about WWF's project activities under the support of TAL program, but people living around CNP do not know about their activities.

Community leaders, members and activists interviewed during the fact-finding mission, informed that the government of Nepal spend huge amounts of budget to protect One horned Rhinoceros, Tiger, Crocodile and wildlife, however there is no specific programs and budget for addressing problems of Tharus, Bote, Darai and Kumals living in CNP areas, says Indira Bote. Outsider's encroachment on community's traditional way of life and livelihood is an alarming situation. Due to the increasement of the number of hotels, as well as lands occupied by outsiders are pushing these communities into a further endangered situation. PABZ project supported by WWF has no specific project activities to protect and safeguard this vulnerable IPs.

### **3.5.1. Fishing and boating rrights and eecological crises**

The traditional livelihood practices of the Bote-Majhi have been restricted since the establishment of CNP. The issuing of contracts for commercial ferrying have displaced IPs, whose traditional livelihood activity was fishing, farming and collecting vegetables and foods from forests.

The CNP Regulation authorizes Warden or official designated by the government can issue licenses with conditions for fishing in the river (Rapati, Narayani and Rew) if you pay an amount of NRs 100.<sup>111</sup> This privilege is given to individuals who live around rivers. Jayamangal Kumal, a local activist dissented the idea of Majhi, Kumal, Darai and Bote having to get a license, when their traditional livelihood subsistence is based on fishing and boating. He further said that Bote have the inherent right to practice their traditional livelihood subsistence, which is depending upon the river and which is recognized by the state prior to the establishment of CNP<sup>112</sup>. The Schedule 1 of the CNP Regulation (b) allows fishing to local Bote, Darai, Kumal and Tharus whose traditional livelihood depends upon fishing. The condition is to use only fishhook; however, using Jaal (net) for fishing is also a traditional way. There is a serious issue of depriving communities to obtain license even though CNP Regulation clearly stipulates Tharu, Bote and Majhi are depending on fishing.

Aitaram Bote, a local farmer who faced the problems of renewing his fishing license also told that his fishing boat (traditional wooden boat) was confiscated and never given back. He was

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<sup>109</sup> Information provided by a key informant (Indira Bote) during fact finding mission.

<sup>110</sup> Home stay is viable business for local people, which are individuals' houses where tourists are managed to stay in family environment, serve local foods and have opportunity to observe community way of life as well as culture closely.

<sup>111</sup> No. 10 of the Chitwan National Park Regulation 1974.

<sup>112</sup> Jaya Mangal Kumal is Kumal former village elected head (Prdhaan Pancha) , teacher and currently working as community mediator who provided information during interview of fact finding mission.

crying when he told his story. The army gives unnecessary troubles to traditional fishermen of IPs living around the area of CNP when they go for fishing in the river.

There are separate stories by BuzzFeed News and The Kathmandu Post that tells about incidents of harassment of local people in relation to the issues of concerns of the livelihoods of local IPs. These are described in the below paragraphs.<sup>113</sup>

In Yogitol, a village that borders CNP on its east side and is populated mainly by Kumals, an Indigenous group traditionally involved in pottery making and agriculture, nearly every household has a story to tell about how they have been harassed by park authorities, wronged by the government, and ignored by conservation agencies.

*On May 16, 2016, Man Bahadur Kumal, along with seven other fishermen from the village, had gone to the river at Golaghat to fish. The group, which had fishing permits, was spreading their hand-woven nets in the river when they were jumped by a group of soldiers.*

*“Without saying a word, they started beating us,” said Kumal, now 66. “They kicked us with their boots, struck us with bamboo sticks, beat us for several hours.”*

Kumal said his right eardrum was damaged in the incident and he lost his hearing for a month. After locals protested against the incident, the Nepal Army agreed to cover his medical expenses.

*“The extent of torture may have gone down but till date, people are being wrongly accused, arrested and abused,” said Chabilal Neupane; the Chitwan-based activist provided the information during fact finding mission.*

Although the conservation Act guarantees the right of IPs to engage in their traditional profession, locals who live near protected areas say they have not been allowed to do so.

*“When we go to authorities to request them to give us fishing permits, they mock us and ask us, ‘why do you need to fish in today’s age?’” said Indira Bote, a resident of Patihani. “They tell us we should go to school and take up other professions. But they don’t provide us with the resources to be able to do that.”*

Other fishermen said even when they had the required permits to fish in the rivers, park rangers and soldiers routinely harassed them and confiscated their goods. It’s reached a point where villagers have stopped going to the park to avoid confrontation.

*“We don’t go there, they don’t come here,” said Jaya Mangal Kumal, a community leader from Yogitol.*

The IPs living within the BZ in CNP around the areas of Chitwan and Nawalparasi identified various forms of harassment and human rights violations related to the cause of livelihoods issues of local IPs perpetrated by the Army, as described below.<sup>114</sup>

Park officials and Army interrogate unnecessarily, blaming them as poachers or helping to poacher, they confiscate fishing nets, boat, accusing them for using 'maha jaal'. Bote, Majhi, Darai, Tharus, Kumal are blamed for destroying river ecology. During the field trip,<sup>115</sup> Manoj Shah-Project Manager, PABZ projects are jointly being implemented under the TAL Program

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<sup>113</sup> See the details evidence of investigation reports of BuzzFeed and The Kathmandu Post. Available at <https://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death> Available at <http://kathmandupost.ekantipur.com.np/news/2019-03-03/nepals-park-officials-who-beat-and-tortured-a-man-were-rewarded-by-the-government-and-the-world-wide-fund-for-nature.html>

<sup>114</sup> ibid

<sup>115</sup> Field was conducted during fact finding mission.

by WWF and DNPWC also pointed out there is a problem of over-fishing and scarcity of fishes in river.

Moreover, with rapid commercialization unsustainable fishing practices have sprouted. Bote and Majhi people commented on the growing practice of fishing with 'maha jaal', especially near Triveni Dam. These nets cause over-fishing both in quantity and quality, because young fish, which cannot be sold, are also caught. The poisoning of fish for commercial gain and recreation has also been reported. In addition, fishing during the spawning season is not uncommon.<sup>116</sup> Unsustainable commercial fishing is carried out from outsiders other than of Bote and Majhi community and these communities do not knit 'maha jaal' and never applied such type of jaal in fishing.<sup>117</sup> Jay Mangal Kumal, a local activists said, "We have sensitized the community about negative aspects of 'maha jaal'. Hence, they are aware of it".

However, there is no restriction to hotels for fishing even though they do it for commercial purpose at the same time communities are compelled to do fishing and collecting forest products which is their compulsion for survival, and which they have done sustainably for generations. Indira Bote, a community right defender informed that the river is everything for their communities, it is their land, and forest is their home, they have to enter into the forest and the river in any condition and when they are caught by the Army then they face problems and harassment.<sup>118</sup> Hotels and waste from Industries such as Bhrikuti Paper Mill, Gorkha Bruawary (Beer Factory) and Sumo distillery (Alcohol factory) pollute the river and reduce number of fishes.<sup>119</sup> Bhrikuti Paper Mill is located outside of the BZ of CNP, Gorkha Bruawary and Sumo distillery are established inside the areas of BZ of CNP respectively. In practice, it was not supposed to be happened, but BZ is being kept silence and allowed to establish these industries in the BZ of CNP and ignoring the rule of law.

Obviously, we need to look beyond indigenous fishing practices for the causes of the ecological crisis in the Narayani River Basin. In 1984, the Bhrikuti Paper Mill was established with Chinese assistance as a public venture on the banks of the river Narayani. Environmentalists have raised concerns over the flow of toxic effluent into the river and CNP. In 2000 AD, two young local lawyers from the environmental action group Pro-public filed a petition in the Supreme Court. Its verdict urged the Government to prohibit the pollution of water and restrict the plant to certain thresholds.<sup>120</sup> However, its verdict has not been implemented by Government yet.

The ecological crisis does not stem from the impact of the paper mills alone. There has been natural population growth in Chitwan. Distilleries, breweries, and other factories also threaten the quality of water. Agro-chemicals such as fertilizers and pesticides introduced during the Green Revolution are washed into the ground water and rivers. Against such toxicity, wildlife has little chance.<sup>121</sup>

Today, fishing is prohibited in areas where crocodiles are connected. Local fishermen contest the myth that fishing in the river affects the food chain and deprives crocodiles of food. These wildlife conservation measures saw fish as nutrition for crocodile, ignoring its importance as

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<sup>116</sup> See footnote 13.

<sup>117</sup> Information provided during key informant interview (Jay Mangal Kumal)

<sup>118</sup> Information provided during key informant interview

<sup>119</sup> Ibid.

<sup>120</sup> See footnote 13 cited in Kshetri, I.D (2004). 'Gairidkot's Citizens Force Closure of Polluting Paper Plant and Allow it to Reopen After Clean-up Guarantee'. In Nepali Times, No 226, 17th-23rd December.

<sup>121</sup> See footnote 13 cited in Dhital, R.R.; Jha, D.K. (2002). 'Fish Fauna of the Narayani River System and Their on the Fishermen Community in Chitwan, Nepal.' In Cold water Fisheries in Trans-Himalayan Countries, FAO Technical Paper Series 431. Rome: Food and Agriculture Organization. Available at <http://www.fao.org/docrep/005/y3994e/y3994e0e.htm>.

a basic food the fishing communities. It is easy to place the blame for this complex mix of factors on the marginalized and poor fishing community, instead of looking for the real causes.<sup>122</sup>

*The authorities of the CNP accuse us of poisoning the river. Fishing is our traditional occupation; we earn our living from fishing. The river is just like our harvest. Does anyone burn down their own harvest? Said Amar Bahadur Majhi.*

### **3.5.2. Rights to ferrying points**

Indigenous fishing communities used to fish and ferry freely between the wide stretches of river from Deughat in the north, to the dam near Tribeni-Bhainsalotana along on the south-western boundary of CNP adjacent to the Indian border. Bhausar Ghat and Ieda Ghat (ferry points), which now fall under the jurisdiction of the CNP and Sigrauli Ghat and Madwya Ghat (now called Narayanghat) were important ferry points. These ghats or ferry points were never treated as private property. They were common property and could be used by everyone. There used to be one chautariya [local leaders of Indigenous fishing communities also called Mukhiya] for every two or three villages. The chautariya was given authority papers over the Ghats. These documents are still with the community.<sup>123</sup> 1993 and 1995 papers about Ghat and River (Pre-existing rights) given by the state authority as usufructuary rights. Leaders of Bote community said that their ancestors were given two choices whether they want land or river. They chose river instead of land thus river is their collective property.

Ferryman (or *Ghatwarey*) would ferry non-fishing villagers in exchange for essential daily food. During festivals, *Ghatwarey* used to collect rice, bread, alcohol, meat, salt, and oil from the local people; a practice called paathi uthauney. They could even pluck jharandhan (bunches of black paddy). Similarly, chautariya would ensure the collection and distribution of food items.

The occupations of fishing and ferrying ensured the subsistence of the Bote and Majhi. However, with the focus of modernization and increasing state control over natural resources including river, fishing communities were gradually displaced from their traditional occupations. Local governments started to contract ghats to private contractors with whom Bote, Majhi could not compete.

Apart from being edged out, the State's drive towards 'development' in terms of modernization led to the construction of bridges and roads and a drift towards surface transport, all at the cost of the ferrying business.

### **3.5.3. Timber and non-timber forest products (NTFPs)<sup>124</sup>**

The vegetables growing wild in the forest have been a rich source of nutrition for Indigenous communities, who depend on them for food for at least three months a year. In the past, these vegetables were also collected and sold in the nearby market, providing cash to purchase other subsistence-related commodities. The access to this source of food and livelihood has been curtailed since the formation of CNP. A wide variety of wild fruits are also found in the forest. These fruits are an important source of nutrients. Members of the Indigenous communities living within the BZ of CNP claim that more than 49 varieties of medicinal herbs are found in the forest. These medicinal herbs meant that Indigenous communities were not dependent on commercial pharmaceuticals in the past. Now they are no longer allowed to collect these traditional medicinal plants.

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<sup>122</sup> See footnote 13.

<sup>123</sup> See footnote 13.

<sup>124</sup> See footnote 13.

Finally, Indigenous fishing communities use timber to construct boats,<sup>125</sup> buildings, and other products. The forest also provided fuel wood and grass for fodder for stall-feeding, building construction, and other uses. The collection and gathering of forest products have been restricted since the delineation of the Park. The creation of the Park initially displaced the IPs who lived there. Later, Park authorities 'permitted' the very same people from the BZ to collect khar khadai (thatch grass) once a year for a fee. The state first takes the right, and then, selectively gives part of it back on paying certain amount defined under CNP Rules, 1974 (Schedule 1).

### **3.5.4. Agriculture, animal husbandry and grazing practices<sup>126</sup>**

The practice of grazing cattle in the forest was stopped after the creation of the National Park. This narrowed the grazing space notably, making maintenance of livestock very difficult for cattle-raisers who mostly belong to the poorest, who are IPs. Approximately, 56,000 HHs and total population 4, 00,000 are living in the BZ of the CNP that include Tharu, Bote, Darai, Kumal and Majhi, including other non-Indigenous people most of them depend upon subsistence livelihood based on agriculture, animal husbandry and grazing practices in pasture lands around the areas of PAs, and approximately, over 50% of total HHs in agricultural, 95% of total HHs in animal husbandry and 100% of total HHs in grazing had to give up their such practices<sup>127</sup> and the number of cattle declined in some villages by 80%<sup>128</sup> and. As well as almost 5,775 *bigha*<sup>129</sup> land, which is equals to 3437.11 hectares is seen almost as the barren lands without cultivation of any crops and agricultural practices.

### **3.5.5. Threats posed by wild animals to people<sup>130</sup>**

National Parks are notorious for accentuating and aggravating the animal-human conflict. There have been numerous reports<sup>131</sup> of threats posed by animals to people living in the BZ. The loss of human life, injury, and the loss of domestic animals frequently occurs around the areas of CNP. Crops that lie in the way of animal herds are crushed and ruined.

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<sup>125</sup> Bote and Majhi community have traditional knowledge to make a boat, which is different then commercial boat and use for fishing. These communities have special knowledge to make this type of boat using special tree. Communities protect and preserve this kind of trees.

<sup>126</sup> See footnote 13 and information provided by key informant interview (Chabilal Neupane-Chitwan based activist) during fact finding mission.

<sup>127</sup> Information provided by key informant interview by Chabilal Neupane (Chitwan based activist and authors of during fact finding mission

<sup>128</sup> See footnote 98.

<sup>129</sup> See footnote 81 and data provided by key informant interview by Chabilal Neupane (Chitwan based activist and authors of using fact finding mission.

<sup>130</sup> See footnote 13.

<sup>131</sup> Ghimire Pramod, (2019). Analysis of Human Wildlife Conflict in BZ Area: A Study from Chitwan National Park, 2. Lamichhane, B.R., Persoon, G.A., Leirs, H. *et al.* Contribution of BZ Programs to Reduce Human-Wildlife Impacts: the Case of the Chitwan National Park, Nepal. *Hum Ecol* 47, 95–110 (2019). <https://doi.org/10.1007/s10745-019-0054-y>, 3. WWF (2007). "A Case Study on Human-Wildlife Conflict in Nepal (With particular reference to Human-Elephant Conflict in Eastern and Western Terai regions)", World Wildlife Fund, Kathmandu, Nepal: pp 47-48.

### 3.6. Violation of cultural rights

According to article 32 of the Constitution of Nepal, individual and community has fundamental right to participate in cultural life including to protect language, culture and heritages that belong to them. Similarly article 51 (j) (8) states that IPs have the right to live with identity and dignity *inter alia* traditional knowledge, skills, culture, social traditions will be ensured and protected. This Constitutional Principle is a directive to all government agencies including CNP. In contrast, Bote, Majhi, Tharu and Kumal are prohibited to collect fishes and other forests products they need to organize rituals. Further, they are not allowed to enter their sacred places.<sup>132</sup> Bote, Majhi, Tharu and Kumal communities Worship the River, nature and even crocodiles, however they are not allowed to enter their traditional sacred sites which are now in the CNP areas.

#### 3.6.1. Loss of cultural identity

##### 3.6.1.1. Sacred spaces and nature<sup>133</sup>

The Bote and Majhi delineate spaces within the forest as sacred. These are called 'than' (sacred spaces in the forest) and are guarded by the forest God Bhairu (forest god). The water goddess, Jal Devi (water goddess), is also worshipped. The women of the community say that they offer pigeons, cocks, and goats to the River Narayani. The river is respected for giving life, because it provides water for drinking, washing, and bathing. It supplies fish, fuel wood and even gold to the lucky ones. Given the high value allocated to natural spaces, there are also local preservation practices. One of these is the observation Barna Garney, a day when the natural world is given rest. On this day, Bote-Majhi do not fish, ferry, enter the forest, or work in the fields. This takes place every year in March/April (Nepal months of Chaitra/Baisakh).

Gaidu, the god of the rhinoceros, is also worshipped. In the months of June-July (Ashad), the tiger is worshipped as Bagheysari (tiger god). The deer (chital) and wild boar are also adulated. Killing dolphins is a sin and great care is taken to ensure that this does not happen. According to a senior fisherman the belief is that if a dolphin is killed, there will be misfortune in the community. The same fisherman reports that "*once a dolphine was killed by accident and immediately thereafter a child died*".

The fishing communities in Nawalparasi believe that each type of fauna has its own 'capital' or favorite location. The Chitwan area is the capital of rhinos. Inside the forest, now the National Park, there is a rock called Dhok, which is regarded as the home of the god of rhinos. Rhinos from a far congregate around the rock. Likewise, the capital of crocodiles is Budhikandar, located at the Bhim Dam. The capital of Tigers is Kanhakhola, Bhainsalotan, south of the Narayani River.

Dried brown fish are needed in the birth to death ritual practice, which is an integral part of Tharu, Bote and Majhi cultures. It is a boon of cultural and spiritual aspects of these communities, but they are not able to maintain their own traditions and customs after being refused to fish in the river.<sup>134</sup> Joanne Mclean (1999) reported that the cultural traditions of the Tharu are at risk of becoming extinct. The forcibly relocation process has forced a situation of cultural deprivation, as Tharu families are no longer able to celebrate their festivals and practice their traditions. Traditionally, every festival Tharu IPs enjoys the practice of fishing. The women would also collect snails. There is no river system in the newly relocated areas,

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<sup>132</sup> Information provided during focus group discussion with Bote, Majhi, Kumal, Darai at Bote community

<sup>133</sup> See footnote 13.

<sup>134</sup> Information provided by key informants' interview dhauturing fact finding mission.

like in new Padampur of CNP for Tharu IPs to continue this practice. They miss fish from their diet and feel sad at festive time.<sup>135</sup>

*As one Tharu said, we are missing our traditions; there is no place to collect snails because there is no river in New Padampur. The snail is very important food for us. There is not enough water here. It is very hard life here. Even during the festivals we are compelled not to do some things, because we are not able to collect the resources for the festivals.*

Joanne Mclean (1999) further reported that when the Tharu IPs moved to New Padampur they left behind their identity and respects for nature in the form their village god. Their spiritual values have been slowly eroded and forgotten as the people have lost their sense of place and belonging. A village elder responsible for the worship of the village god expresses the sense of loss:<sup>136</sup>

*In Jayamangala, the earlier settlement before relocated to New Padampur we used to worship our own village god, but here nobody is worshipping our god. Here is no god. It is not possible to bring all the gods here, because those places were the gods' places but how can we bring those gods here? Now we do not have even the village god to protect the crops, animals and family. We don't have any gods here now.*

The cultural survival of the Tharu IPs who have been relocated in new places is threatened. Respect for their ancestral land and settlements, access and sustainable use of and management of natural resources has been undermined due to the policy of establishing PA in Chitwan. It is a clear tragedy that the IPs likes Tharu, Bote, Majhi, Kumal and Darai who have protected the natural resources for centuries have been removed as a way for protection and conservation of the natural resources. It is clearly understood that cultural survival of Tharu depends on their continued interaction with their natural environment. The forests, wildlife, grasslands and rivers all are essential links in the survival of the Tharu culture. The Tharu IPs who have been relocated from the northern boundary of CNP is restricted to access and use the natural resources, shifting the economy, disrupting the social and cultural institutions and ultimately threatening the survival of the culture.<sup>137</sup>

### **3.7. Community empowerment and representation**

The article 42 of the Constitution guarantees the right to social justice including the right to participation, based on principle of proportional representation of social deprived IPs, women and other groups in every state structure. Article 51(G) (1) states that sustainable use of natural resources and the prerogative rights of local people *inter alia* equitable distribution of benefit sharing. According to Section 16(C) of CNP Act 1972 the user's committees are formed by the national park warden in coalition with local authority for managing fallen trees, dry wood, firewood and grass in national parks, reserve, conservation and BZ. The concept of BZ evolved after nearly two decades. The state is now dominating exclusionary PA management practice and there are 22 BZUCs in CNP through which the programs of BZ have shifted management approaches from resource control to revenue sharing with the local communities since 1996. These committees have been established to make conservation more participatory and inclusive by giving them certain powers to decide how best to spend the revenue earned from the CNP. According to a 1996 BZ management regulation, these committees are stipulated to 30-50 percent of the annual income from any conservation area. This fund must be spent at the local level through the Buffer Zone Management Council

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<sup>135</sup> See footnote 98.

<sup>136</sup> See footnote 98.

<sup>137</sup> See footnote 98.

(BZMC). The committees get to decide how to allocate the budget they receive from the park. The guidelines in the regulation state that the committee should spend 30 percent on community development, 30 percent on conservation activities, 20 percent on internal income and skill development, 10 percent on conservation education and 10 percent on administrative expenditure.

The Government of Nepal (GoN) has developed and which being implemented to re-use 50 % of park revenues for conservation activities and disbursed approximately 42 million US \$ in CNP till 2010.<sup>138</sup> Despite this advance, development initiatives were unable to reach the most marginalized communities.<sup>139</sup> The BZ management legal aspect has granted local participation, but the managerial structure largely remains top down.<sup>140</sup> According to Agrawal *et al.*(2000), resources were exploited by elites.<sup>141</sup> However, the effectiveness of the program in terms of policies in line with field practices of revenue distribution is still questionable, and needs to be examined. Another issue raised by key informants<sup>142</sup> there, is the lack of representation of IPs in positions of power which adversely leads to their voices being systematically excluded. Out of 22 BZUCs in CNP, Khas Arya representation is 68.18%, Tharu 18 %, Tamang 9 %, Gurung 5% and representation of Majhi, Bote, Darai and Kumal is Zero.<sup>143</sup> The Kathmandu Post article<sup>144</sup> claims through an analysis that the leadership makeup of CNP's BZMCs shows that less than 10 percent of the Chairpersons are from IPs.

The data shows that representation of IPs is extremely low and the representation of the directly affected IPs is also nil. Due to this reason, there is no situation in which the voice of the directly affected community within the BZ areas can be transferred to the BZMC and BZUCs.

As far as the settlement pattern in the relocation areas around the villages of CNP is concerned, previously the Tharus were a homogenous group living in their earlier settlements. After relocation the new villages became more ethnic heterogeneous. Though there were different ethnic groups living in earlier settlement they had formed their own segment within their own cultural identity. In their original settlements compact villages were located separately and functioned autonomously. Since relocating to new areas both villages are now mixed together and the traditional village structure has been lost. In the past Tharu people lived together in extended families where compact village structures played a vital social role.<sup>145</sup> The social structure and customary institutions of IPs, such as Tharu are totally ignored and not recognized by contemporary conservation policies and laws. Those who are

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<sup>138</sup> T. Silwal et.al . (2013). Revenue distribution pattern and park-people conflict Chitwan National Park. Vol.23. No 1. Banko Janakari published in 2014-01-10. See in <https://www.nepjol.info/index.php/BANKO/issue/view/621> cited in DNPWC, 2012.

<sup>139</sup> See footnote 13.

<sup>140</sup> See footnote in 139. See in <https://www.nepjol.info/index.php/BANKO/issue/view/621> cited in Heinen,J.T and Mehta, J.N (2000).Emerging issues in legal and procedural aspect of Buffer Zone Mangement with case study from Nepal. Journal of Environment and Development 9(1):45-67.

<sup>141</sup> See footnote in 139. See in <https://www.nepjol.info/index.php/BANKO/issue/view/621> cited in Heinen,J.T and Mehta, J.N (2000).Emerging issues in legal and procedural aspect of Buffer Zone Mangement with case study from Nepal. Journal of Environment and Development 9(1):45-67.

<sup>142</sup> Information provided by key informants interview (Chabilal Neupane, Indira Bote, Jai Mangal Kumal, Shantosh Bote ) during fact finding mission.

<sup>143</sup> Data is based on analysis of information provided by key informant interview by Chabilala Neupane, Chitwan based activist.

<sup>144</sup> See the details evidence of investigation report of The Kathmandu Post. Available at <http://kathmandupost.ekantipur.com.np/news/2019-03-03/nepals-park-officials-who-beat-and-tortured-a-man-were-rewarded-by-the-government-and-the-world-wide-fund-for-nature.html>

<sup>145</sup> See footnote 98.

able to get representation in the committees also have no space and role in the decision making process of the committees.

According to the locals, there is a strong opinion that these executive members of BZMC and BZUCs strictly work under the direction of the warden of National Parks and most of the committee executive members are not from the directly affected IPs those who are Tharu, Bote, Majhij and Kumal.

As local residents told the Kathmandu Post,<sup>146</sup> while members get elected to these committees through an election, the process isn't as democratic as it sounds.

*“It’s impossible for a person with no political or economic influence to get elected as president of a BZMC,” said Lalit Kumar Chaudhary, president of the Tharu Welfare Society. This is the cause that rights-based approach to development and development by people is not being adopted and not been taken into account at ground realities. In addition of this, participatory and inclusive democracy is also not being practiced in Nepal. As well as the Constitution of Nepal, 2015 guarantees the fundamental rights to participation and proportional representation and social justice, however it is not being respected and implemented.*

The country report, 2009 of the UN Special Rapporteur on the Rights of IPs received the report that existing benefit-sharing mechanisms are ineffective, and that they do not lead to increased community development. A major obstacle in this regard seems to be the composition of the Chitwan BZ and District Development Committees (DDC), in which IPs are insufficiently represented.<sup>147</sup> In Chitwan, for example, there are 22 BZUCs. These committees were established to make conservation more participatory and inclusive by giving them certain powers to decide how best to spend the revenue earned from the park.

Jana. Sudip (2007) reported that several studies have shown that the poorest of the poor communities, which have no legal recognition to resources, are often excluded from the benefits of BZ development program.<sup>148</sup> Silwal (2003) reported there were no representation of poor, women and marginalized communities to raise their voices at higher-level of resource management committees. This could be a reason to allocate a small portion of the budget for victim's choice. The continuing exclusion of women and disadvantaged groups from governance and mainstream development is reflected in the low-level achievements of women and disadvantaged groups.<sup>149</sup> According to the study of T. Silwal *et.al* (2013), BZ management programs have been promoting community development at local- level. Most of the budget allocation trends are favorable for infrastructures (road, community buildings and schools) followed by conservation and education. The study showed that a small amount of budget had been allocated to introduce alternative energy, animal preventive infrastructures and provisions for wildlife damage compensation schemes. The provision of the wildlife damage relief is not applied except to human casualties. The wildlife victims have bitter experience of not getting relief fund even though there is a provision in the Relief Guideline 2066 (2009/10).<sup>150</sup> The procedure for obtaining relief fund is lengthy and requires a lot of

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<sup>146</sup> See the details evidence of investigation report of The Kathmandu Post.

Available at <http://kathmandupost.ekantipur.com.np/news/2019-03-03/nepals-park-officials-who-beat-and-tortured-a-man-were-rewarded-by-the-government-and-the-world-wide-fund-for-nature.html>

<sup>147</sup> Report on the situation of IPs in Nepal. See in details at A/HRC/12/34/ Add.3, 20 July 2009. Available at [nsr.jamesanaya.org/docs/countries/2009\\_report\\_nepal\\_en.pdf](http://nsr.jamesanaya.org/docs/countries/2009_report_nepal_en.pdf)

<sup>148</sup> See footnote 13.

<sup>149</sup> See footnote 138 cited in UNDP (2002). Nepal Human Development Report 2001. Poverty Reduction and Governance. United Nations Development Programme, Kathmandu Nepal.

<sup>150</sup> The relief practices were adopted from Buffer Zone programs including livestock damages whereas livestock compensation scheme was stopped after promulgation of the Relief Guideline 2066 [GoV 2066 2009/10 ].

paper work. The compensation amount provided for human death should be consistent with other compensation policies of the Government.<sup>151</sup> In the case of livestock damages, compensation should be placed as per market value, to which the local people reiterated as there is a need to revise the provision of certain percentage of park revenue for wildlife victims at field-level.<sup>152</sup>

**Box.1 Salient features of Revised Version of Wildlife Damage Relief Guideline, 2069 ( 2012/13)**

The relief fund provision for incidents from only 8 species (tiger, elephant, rhino, snow leopard, wild buffalo, wild boar and bear) should be widened to all wildlife species.

The Revised Guideline also recognizes relief only to the Nepali citizens. It may not be rationale since Indians have ties Nepalese citizen by religious and customs; they frequently come to Nepal to meet their relatives in Terai region of Nepal. Both Indian coming to meet their relatives and other third-nation tourist could not be considered for relief fund.

The revised compensation amount to the victims is (NRs 10,000 to 300,000 for human casualties). However, the community expected that it should be equivalent to other compensation schemes of the country (Nepal).

The Park Office has been authorized to provide immediate relief to the amount of NRs 10,000 and NRs 50,000 in the cases of human injuries and death respectively.

The lengthy process of receiving relief fund is revised and should be placed at the Office of the Regional Directorate instead of Ministry of Finance.

The BZ model is found to have tremendous positive impacts on the nearby PAs of IPs although the poorest amongst them and including those who live close to the National Park and directly impacted Tharu, Bote, Majhi, Darai and Kumal are still not found to benefit. The issue of sharing the benefits equitably among all stakeholders-particularly, poorest, women, marginalized and disadvantaged groups and IPs-remains a major challenge.<sup>153</sup> The BZ development and conservation programs have been implemented with the technical and financial support of different conservation organizations like WWF and donor agencies. Despite the flow of huge resources, these attempts seem to be unable to establish an amiable relationship between IPs and PA management. Amelioration of these conflicts and ensuring conservation along with sustainable livelihoods of IPs has become a real environmental challenge in the areas of CNP.<sup>154</sup>

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The Government has promulgated Revised Guideline 2069 (2012/13) has made a provision of fund at park where immediate relief could be provided and reimbursed from the Ministry of Finance through DNPWC.

<sup>151</sup> See footnote 138 cited in Paudel, A. (2012). Human-tiger Conflict in Chitwan National Park, Nepal. B.Sc.Thesis, Institute of Forestry, Pokhara Campus, Pokhara Nepal.

<sup>152</sup> Information provided by key informants interview with the representatives of local communities during fact finding mission.

<sup>153</sup> Rai, Yogeshwar. Indigenous Peoples' Rights Issues and Guiding Principles. Nepal Federation of Indigenous Nationalities (NEFIN) and National Environmental Coalition of Indigenous Nationalities (NECIN), Network, February (2009), cited in Gurung, H. (2005). Indigenous Peoples and Protected Areas. How has Impact Assessment Measured up to the Challenge of Indigenous Peoples' Development? IAIA Preference Event Summary Report on Indigenous Peoples and Impact Assessment. USA World Bank Group. Grand Council of the Cree (Creyou Istche) Tebtebba Foundation and Hydro Quebec.

<sup>154</sup> Rai, Yogeshwar. IPs' Rights Issues and Guiding Principles. Nepal Federation of Indigenous Nationalities (NEFIN) and National Environmental Coalition of Indigenous Nationalities (NECIN), Network, February(2009), cited in Paudel, N.S.(2002). Integrating People and Nature: A perspective for

Kathmandu post report claims that many community members also expressed discontent with the way conservation agencies like WWF have turned a blind eye to incidents of human rights abuses. Locals, activists, and representatives of Tharu, Bote and Kumal communities, said they have never had any direct relationship with the organization, despite the conservation agency promoting itself as working closely with communities.

*“We’d be lucky if they came and talked to us,” said Kumal, the community leader. “They have to consult us, educate us, and teach us. They don’t say anything.”*

Individuals who were approached by representatives from the organization said the only time they were contacted by WWF was 12 years ago, when the organization wanted them to drop Shikharam’s case against the park officials.

*“I didn’t trust them, I didn’t think they would keep their word,” said Shiva Narayan Chaudhary, head of the indigenous society. “And as expected, after the case was resolved, they never came back to the community.”*

### **3.7. Conflicts and racism**

In past, Tharu, Majhi, Bote, Darai and Kumal were legally considered as *Masinya Jati*-which means they could be made into slaves if they committed certain crimes. This inhuman legal concept retains in the PAs laws in indirect manner at present.

IPs who were excluded after the creation of PAs were not compensated and made to suffer morally, socially, culturally, spiritually, economically and physically. They were uprooted from their traditional lands—which are in fact the foundation on which their culture rests. This resulted in IPs inevitably losing their Indigenous knowledge, innovation and practices. Often their customary ways of managing and controlling their ancestral land have been thrown into disarray by the imposition of external rules and regulations, undermining the authority of Indigenous leaders causing impoverishment and their millennial systems of natural resource management disrupted and destroyed. Their rights trampled and colonial forms of administration and enforcement imposed on IPs' customary authority. This was created once the PAs were established in the ancestral territory and homeland of IPs. This led to a conflict between State agencies because the Government implies that flora (plants) and fauna (animals) are more important than IPs and seek to take over their lands in the name of conservation. Consequently, IPs seem to have been alienated from these resources which has changed them from conservator to destroyer. There are other forms of conflicts that have been documented in different parts and nearby the areas of CNP around the issues of PAs and IPs. It is clear that major sources of these conflicts are restriction over access and resource use, human and domestic animal casualties from wild animals, grazing and collection of fuel wood and other fodder. The effects of these conflicts are the degraded quality of life of many people, particularly poor and IPs living in and around the CNP.<sup>155</sup> As a result their right to live with fundamental freedom and dignity has been violated and cultural genocide has been done.

In this context, conservation policies, rules and regulations was build up on the principle of nature-culture dichotomy, which leads to separating environmental resources to protect them from IPs, has been severely criticized for its wrong philosophical base and its practical

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Environmental Conservation and Livelihoods in the Context of Nepal. Forest and Livelihoods Vol 2(1). Lalitpur: Forest Action.

<sup>155</sup>Rai, Yogeshwar. IPs' Rights Issues and Guiding Principles. Nepal Federation of Indigenous Nationalities (NEFIN) and National Environmental Coalition of Indigenous Nationalities (NECIN), Network, February (2009).

consequences on the livelihoods of the poor rural inhabitants and IPs in the areas of CNP.<sup>156</sup> Fortunately, the Government, conservationist organizations like WWF and other development partners and agencies have not been blind to these problems looking into the escalating conflicts between National Parks and people and its root causes. It is just because of that there are exclusionary conservation practices and rights based approach to conservation is still not being adopted and implemented looking into the ground realities. So they have agreed on the idea that nature cannot be protected by isolating it from people particularly IPs who are inextricably linked to the natural system.<sup>157</sup>

2009 of the UN Special Rapporteur on the Rights of IPs claims with regard to offences dealt with by the Chief Warden, upon whom the NPWC Act vests all law enforcement powers. PAs, including National Parks, now constitute approximately 21 percent of the total landmass in Nepal. Often these areas were created at the expense of Indigenous lands. In the Himalayas, most of the land areas of the six existing National Parks cover IPs' traditional lands. The NPWC Act provides no recognition of IPs' right to consultation or to access their traditional lands and resources, while giving quasi-judicial powers to the park chief wardens.<sup>158</sup>

According to key informants, these officials are never held accountable by the state or the conservation agency when they abuse their power. The problem, they say, lies in the law that bestows a wide range of powers on one individual.

Here is an excerpt from the from The Kathmandu Post article.<sup>159</sup>

In 2006, when Shikharam was detained and subsequently killed, the warden of a national park enjoyed immense power: reserving the right to arrest any suspect without a warrant, signing off on holding a suspect in custody for an indefinite period, hearing and issuing judgments on cases, and sentencing suspects for up to 15 years in jail.

The power accorded by the NPWC Act 1973 was problematic, legal advocates say, because it authorized a government officer with no legal expertise and considerable conflict of interest to pass judgment.

*“This is somebody who has had no legal training,” said Nanda Lal Mahato, an attorney who previously served as a judge for the Appellate Court and represented Shikharam’s family in 2006, in regards to the quasi-judicial authority given to the warden.*

*“Whether or not it was right for the chief warden himself to be part of the mission to arrest criminals is debatable,” he writes in the book. “However, it was certainly not unethical for him to accompany us as the chief warden and not as a judge.”*

The fifth amendment of the NPWC Act, which was passed in 2017, curtailed the power of the chief warden to some extent. Cases are now heard at the district court, suspects have to be presented in front of an adjudicating authority within 24 hours of arrest, and suspects can be held in detention for a maximum of up to 45 days after seeking permission from the court.

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<sup>156</sup> See footnote 154.

<sup>157</sup> See footnote 155.

<sup>158</sup> Report on the situation of IPs in Nepal. See in details at A/HRC/12/34/ Add.3, 20 July 2009. Available at [nsr.jamesanaya.org/docs/countries/2009\\_report\\_nepal\\_en.pdf](http://nsr.jamesanaya.org/docs/countries/2009_report_nepal_en.pdf)

<sup>159</sup> See the details evidence of investigation report of The Kathmandu Post.

Available at <http://kathmandupost.ekantipur.com.np/news/2019-03-03/nepals-park-officials-who-beat-and-tortured-a-man-were-rewarded-by-the-government-and-the-world-wide-fund-for-nature.html>

Despite these positive changes, activists say the warden still enjoys considerable clout because the park is still responsible for conducting investigations related to violations of rules under the NPWC Act. Park rangers still have the right to arrest anybody without a warrant.

*“On paper, the warden is required to get permission from a judge to extend the remand of a suspect,” said Neupane. “But in reality, the chief warden is pretty much the decision maker.”*

Anti-poaching efforts, conservation experts say, have also primarily focused on prosecuting locals, who are usually hired by powerful poaching syndicates to do their bidding in exchange for a miniscule amount of money and are at the bottom rung of the criminal network.

*“The fight against poaching mostly punishes lower-level actors, often poor local and IPs, who are then portrayed in the media as members of a powerful and influential criminal network,” said Shradha Ghale, a journalist who has long been covering these issues. “Most reports also don’t explore why these people do what they do.”*

There are other examples of incidents of conflict with the community, with youths and with women that have increased the conflicts and racisms. The following paragraphs describe such incidents.<sup>160</sup>

### **The Aghauli incident**

There was a time when officials from the range posts used to fish with Bote-Majhi and Mushar. *“We used to fish without any fear. But one day at around 7:00 am, about 18 of us carrying two to three kilograms of fish each were preparing to go back to our settlements. Prashasan (national park officials) intervened and caught us. They punished us hard by beating us and making us lie down on the top of a rock. They also burnt our fishing net and smashed our boats. We were forced to leave silently.”*

### **The Parsauni incident**

The night before the incident, ten leaders of the Bote-Majhi had organized a meeting at Parsauni. The next morning 15-20 Army personnel terrorized the entire village. They began to harass the women. They accused the fishing community members of being thieves and began to thrash them without discrimination. *“Some of us could not tolerate this and demanded, ‘Who is a thief? Show us and we will punish the person.’ Army personnel slapped some of us. They smashed our boats and set our fishing nets on fire. They also threatened that if we fish in the Narayani river again, they would shoot us dead.”*

### **The second Aghauli incident: Shergunj, Aghauli VDC**

Local Bote and Majhi women had a conflict with a ranger. The ranger was supposedly a harsh person. A group of local women beat the ranger to retaliate against the harassment. The National Park Administration issued a notice to arrest those responsible for the incident. Four Majhi people were arrested and taken to Kasara, the head office of CNP. *“Their hands were tied and they were dragged by the authorities,”* said Khor Bahadur Majhi who witnessed the arrest. The prashasan (administration, national park officials) at Kasara subjected them to severe torture. The fishermen were made to coat their body with sugar and lie on the ground, which was full of red ants.

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<sup>160</sup> See footnote 13 and details on mistreatment and sexual abuse (3.2.1) as mentioned as above.

Local fishing communities became furious after hearing of this. They approached the local political party leaders and appealed for the immediate release of those detained and tortured. After 17-18 days of continuous torture, the Park authorities finally released the detainees after charging them a fine of NRs 1,500 (\$ 11). This incident took the militancy of the movement to a higher level.

### **Bagman Chowki Gherao (a seize or strategy of collection action)**

A local fisherman from Parsauni was beaten by prashasan (administration, national park officials) while he was fishing in the Narayani River. He was picked up by the authorities and disappeared. The local including non-fishing communities such as Tharu Indigenous communities, Magar, Bahun and Chhetri, in fact almost the entire village, became agitated.

A huge mass of villagers surrounded Bagman Chowki demanding to know the wellbeing of disappeared fisherman. Agitators entered the office and were horrified to see splashes of blood in the room. The angry villagers beat the officials. They also smashed furniture and telephone sets and set the range post on fire. They chased away employees of the range post. It was later discovered that the fisherman thought to have disappeared had fled to Triveni in the southern part of Chitwan district.

### **Army raid in Shergunj**

Raid by the Army in Shergunj is still a fresh and painful memory for the villagers. The local fishing communities used to construct a small hut like structure called a chapadi (small huts located next to the river) on the banks of Narayani River. The hut served both as shelter and as a place to dry fish.

Once, a group of Army came to the village. They threatened the locals and told them to evacuate their huts and abandon the venue. They said that head officials of the Army were visiting the area. They torched the huts and terrorized the entire settlements. *"We were panting. We ran here and there. We saw signs of big storms. Had we retaliated they would have beaten us to death,"* Kaka recalled. After demolishing the huts, the Army personnel then took away the fish that were drying on top of the huts.

### **Conflict between youth and Army**

Six Bote and Majhi youth including two females were fishing in the River Narayani across from Piprahar village using a handmade net. *"We saw three soldiers approaching us. They were patrolling the National Park with big knives and guns,"* reported Rajhu Majhi. Amar Bahadur's Son claims that the soldiers were also hunting birds. The soldiers belonged to Gajipur barrack. *"Without even enquiring, they abused us verbally. They beat three of us for almost an hour turn by turn with a stick. Once they were exhausted, they forced us to hit each other. They said, 'You have come to hunt deer. The population of deer is rare today because of you people.' After harassing us they went ahead with their patrol."*

It was reported that the same troop beat up a group Tharu youth in another village a week after this incident. In response to descent and torture a group of local youths decided to collectively retaliate against the Army.

#### **4. Question on poaching cases**

Responding to the question on reason of poaching and arrests of locals in accusation of poaching, locals raised a counter question that there is no possibility of poaching without involvement of powerful leaders and park officials poaching. One informant, who doesn't want to disclose identity, informed that sometimes, park people deliberately ask villagers to provide food and guides to outsiders who enter CNP for illegal purposes. Later they arrest villagers accusing them of helping poachers. This accusation from locals drags our attention to delve on this issue in depth, if there is any clue or facts to corroborate it. Kamal Jung Kunwar who was involved in torturing Sikharam to death wrote a book titled "Gainda lai Char Barsa" Four Years for Rhino, and reveals political leaders involvement in smuggling rhino horns as a long time trend. He gave names of some leaders and proof of their involvement as well as a trend of withdrawal of cases by government. Interestingly, Mr. Kunwar himself faced a case of concealing a rhino's horn when CNP seized many from poachers. The case was filed by the Commission of Abused of authority (Constitutional Body mandated to look after abuse of power by people who hold public authority), later Kunwar was acquitted on technical ground, saying that CIAA does not have jurisdiction to look after this type of case. And, the fact of concealing rhino's horn remains unanswered due to the decision of the Supreme Court. (See case Annex-1). Narendraraj Paudel, former chief district officer in Chitwan District, wrote an article raising questions of Kamal Jung Kunwar's involvement in organized poaching responding to the contents of the book written by Kamal Jung Kunwar.<sup>161</sup> We interviewed some persons who do not want to disclose their identity and who have faced charges of helping poachers. They said that they were innocent and they were trapped on false cases as escape goats. These facts and issue raised many questions about poaching and associated cases.

#### **5. Response of WWF against human rights violation and abuses**

WWF was the first International Non-Governmental Organization (INGO) to formally adopt a policy on Statement of Principles recognizing IPs' rights in 1996 and it was updated in 2008. WWF's policy recognizes that "most of the remaining significant areas of high natural value on earth are inhabited by IPs" and states that the organization "will not promote or support, and may actively oppose, interventions which have not received the free, prior and informed consent (FPIC) of affected indigenous communities". WWF's policy reflects their dedication to respecting Indigenous and traditional peoples' human and development rights and recognizes the importance of conserving their cultures. WWF is committed to collaborating with IPs and their organizations to conserve and sustainably use natural resources and to advocate on issues of common concern. WWF believes that partnership depends on recognition of rights and interests of IPs, appreciation of their longstanding contributions to biodiversity conservation and understanding of the links between biological and cultural diversity.

As discussed above, WWF said that it is moving towards in implementation of internationally agreed conservation principles and guidelines related to IPs that require increased participation of IPs in management of PAs and recognition of the rights of IPs. There is hardly any information regarding good practices that indicates the actual effective and meaningful participation of IPs in the management of PAs. So far, the practical application of these guidelines has mainly been concerned with the relaxation of restriction of access and user rights of natural resources by IPs in parts of PAs and the creation of consultative

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<sup>161</sup> See details in <http://www.paradarshi.com.np/index.php/2012-08-01-09-54-24/1129-2013-12-20-02-16-01> visited, 22 December 2019

committees to facilitate community involvement in conservation objectives. Despite of these positive moves, over two decades of efforts towards making entire/true efforts for enhancing effective and meaningful participation of IPs in conservation and management of PAs, there are few successful examples. IPs' participation is woefully low in comparison with the greater dependence of IPs' on resources of PAs and their high population density around PAs.<sup>162</sup> However, over 20 years after the adoption of the policy, principles and guidelines implementation on the ground remains highly problematic and have not been put into practice.

Moreover, WWF is continuing to support and promote the creation of conservation areas on IPs' lands without their genuine FPIC in entailing not only a denial of IPs ownership and control but significant restrictions on their traditional lands and natural resources to access and use these, forced relocation, impoverishment, cultural destruction and the undermining of traditional systems of natural resource management and livelihood practices. As a result, WWF's program and activities is supporting violation of the IPs right to live with dignity and leading to cultural genocide.

A conventional conservation approach, which essentially consists of the establishment of PAs along with the integrated conservation and development in the affected areas, is being increasingly criticized for its wrong assumption of the nature-culture relationship. Modern development and conservation processes tend to focus on immediate technical issues and the promotion of "alternative livelihood" economic measures. This reductionist approach to defining problems has limited the scope of seeking alternative options of nature conservation that seeks to compensate IPs for their foregone access and sustainable uses of natural resources. Observations and experiences around PAs show that integrated conservation and development programs are not the effective solution to minimizing conflicts between the National Parks and IPs.<sup>163</sup>

WWF have sought to impose their culturally-bound vision of natural resource management on IPs without taking into account their human rights under international human rights and Indigenous rights as well as environmental instruments and their different priorities and perceptions that affect Tharu, Bote, Majhi, Darai and Kumal IPs.

As far as our knowledge about WWF is concerned, they are not directly involved in these human rights violations and abuses. However, their level of collaboration and partnership with those, who are the perpetrators-in particular government and local organizations, is significant. Projects have been implemented in the areas of PAs in Chitwan, and other areas of Nepal, through WWF's financial and technical support. They have very probably contributed to the anti poaching budget—although it is difficult to indicate the actual amount based on WWF's financial accounts.

BuzzFeed news claims that the most widely known conservation organization WWF Nepal supported to set up<sup>164</sup> "anti-poaching units" in Nepal's parks starting in the 1990s. WWF Nepal had long helped fund and equip Chitwan's forest rangers, who patrol<sup>165</sup> the area in jeeps, boats, and on elephant backs alongside soldiers from the park's in-house army battalion. A year-long investigation by BuzzFeed News has claimed that WWF has continued to fund equipment and training and working with CNP and the Army, who are accused of beating, torturing, sexually assaulting, and murdering scores of people.

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<sup>162</sup> See footnote 155.

<sup>163</sup> See footnote 155.

<sup>164</sup> See the report on Anti-Poaching Operations in RBNP, RCNP, PWR, SWR (1992-1998).

<sup>165</sup> See in details, available at <https://blogs.wwf.org.uk/blog/wildlife/rhinos/world-ranger-day-putting-duty-self/>.

Internal documents obtained by BuzzFeed News, show that the charity WWF provided<sup>166</sup> monthly salaries for staff, rewards for informants, and a variety of field gear for rangers, including “khukuris,” curved knives for rangers commonly used by the Gurkhas, the famously fierce army brigade. A former WWF Nepal employee told The Kathmandu Post that he was once ordered to buy expensive North Face jackets for senior Army officials who were visiting CNP—who gifted them to the Army only after he replaced the North Face logo with WWF’s emblem which can cost upwards of NRs 20,000 (\$175) per piece. The same employee added that he had also bought 20 mountain bikes, each costing around NRs 60,000 (\$524), emblazoned the organization’s logo on them, and gifted the bikes to community-based Anti-Poaching Units.

IPs living around the areas of CNP are continuously suffering human rights abuses by these forces of park officials and Nepal Army. Villagers have reported beatings, torture, harassment, threats, sexual assaults, and killings by these forces. They have accused them of confiscating their firewood and vegetables and forcing them into unpaid labor.<sup>167</sup>

Despite the report’s findings<sup>168</sup> and confessions by park officials about engaging in torturing Shikharam Chaudhary to death, WWF has continued to support and reward Park officials of Chitwan. The officials accused in Shikharam’s death would go on to have illustrious careers in conservation. Five years later, after the incident of death of Shikharam Chaudhary, Assistant Warden Kamal Jung Kunwar, representing CNP, was awarded by WWF for “playing an instrumental role in achieving zero poaching for the second year in a row.

Here is an excerpt from the Kathmandu Post article<sup>169</sup> that justifies the reasons the report alleged WWF supported Park officials in CNP who were accused of torturing a Shikharam Chaudhary, to death in 2006. Behind closed doors, various interest groups had been lobbying the government and pressuring Shikharam’s family into dropping the case.

Likewise, multiple activists who spoke to the Post said WWF representatives had urged them to convince Shikharam’s family to drop the complaint, even promising donations to their programmes if they agreed.

*“They [WWF Nepal] kept trying to convince us that the three [rangers] were innocent,” said Shiva Narayan Chaudhary, president of the Nepal Indigenous Development Society, who attended several meetings held between the two parties. “They kept saying things like ‘they are government officials, they have done no wrong’.”*

The section manager of the TAL,<sup>170</sup> a WWF-supported program, at the time was Purna Bahadur Kunwar, who is related to one of the officials charged with murder. Kunwar is now the field coordinator for WWF’s Chitwan Annapurna Landscape project.

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<sup>166</sup> See the Anti-Poaching Activities in Royal Chitwan National Park (1992-1996).

<sup>167</sup> See in details of this report as mentioned above on key findings and source of injustice for IPs.

<sup>168</sup> Citation in the report of the Kathmandu Post A team of independent human rights activists later investigated the incident and their report—which was published in a 2013 book—declared that Shikharam had died because of “inhuman, cruel and degrading” torture “at the hand of Park authorities.” The report condemned the lack of due process for suspects and blamed the broad powers given to Nepal’s anti-poaching forces for Shikharam’s death.

<sup>169</sup> See the details evidence of investigation report of The Kathmandu Post. Available at <http://kathmandupost.ekantipur.com.np/news/2019-03-03/nepals-park-officials-who-beat-and-tortured-a-man-were-rewarded-by-the-government-and-the-world-wide-fund-for-nature.html>

<sup>170</sup> See footnote 8.

*“He would say, ‘Let’s not politicize the issue, it was an accident, who will be there to take care of animals?’” said Birendra Mahato, the chairperson of the Tharu Cultural Museum and Research Center.*

In an interview with the Post, Nanda Lal Mahato, the lawyer who represented the victim’s family, said his clients were determined to see justice served and refused to budge from their position.

*“Ultimately, WWF was able to get through to the government, and the government made a decision on their behalf,” said Mahato.*

On March 4, 2007, nearly nine months after Shikharam’s death, the Cabinet, under then Prime Minister Girija Prasad Koirala, announced its decision to dismiss the case. WWF Nepal welcomed the government’s decision in a glowing press release which mentioned that several conservation organizations had been upset about the charges and “had been lobbying with major political parties and the government for their release.”

The statement characterized the victim, Shikharam, as a suspected poacher and illegal wildlife trader—even though there was no evidence against him—and the officials accused of torturing him as those with a proven track record in conservation.

*“WWF welcomes the government’s decision,” WWF Nepal, declared in the statement. “I have every confidence that this move will renew the motivation of park staff and other conservationists to save Nepal’s rhinos and root out illegal wildlife trade. WWF will always be there to support this Endeavour in any way we can.”*

It is more relevant that in the given context and scenarios as Forest Peoples Programme (FPP) argued<sup>171</sup> that for international conservation actors, like, WWF they might have response is that they are “constrained” in what they can do by national laws and that it can be “challenging” for organizations “working in a sovereign country with distinct legal frameworks”. Even if this true it is beside the point. All organizations working in countries with difficult governance systems that there are challenges and compromises might have involved. But that does not mean that all compromise and collaboration is acceptable. No one is entitled to hide behind the skirts of local legislation which fails to protect basic rights. In the words of the UN Guiding Principles on Business and Human Rights<sup>172</sup> the obligation of WWF and other businesses to respect the human rights of communities affected by their projects “exists over and above compliance with national laws and regulations”. Principle 13 goes on to state that, whatever those laws may say, enterprises must “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations ... even if they have not contributed to those impacts.” It is also overt non-compliance with WWF’s own policies on IPs and Conservation: WWF Statement of Principles.<sup>173</sup>

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<sup>171</sup>See, Complaint abandoned, but systematic human rights violations continue for indigenous Baka communities in Cameroon by FPP. Available at <https://www.forestpeoples.org/en/rights-based-conservation/news-article/2018/complaint-abandoned-systematic-human-rights-violations>.

<sup>172</sup> See, for instance, Business and Human Rights Resource Centre. Available at <https://www.business-humanrights.org/en/un-guiding-principles>.

<sup>173</sup> See in details WWF’s Statement of Principles on IPs and Conservation was drafted in 1996 and updated in 2008 that WWF recognizes that **IPs are among the Earth’s most important stewards of natural resources** and key partners in realizing our mission. WWF’s policy reflects our dedication to respecting indigenous and traditional peoples’ human and development rights and recognizes the importance of conserving their cultures. We are committed to collaborating with IPs and organizations to conserve and sustainably use natural resources and to advocate on issues of common concern. WWF believes that partnership depends on **recognition of IPs’ rights and interests**, appreciation of their longstanding contributions to biodiversity conservation and understanding of the links between biological

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and cultural diversity. Available at [https://wwf.panda.org/our\\_work/people/people\\_and\\_conservation/wwf\\_social\\_policies/indigenous\\_peoples/](https://wwf.panda.org/our_work/people/people_and_conservation/wwf_social_policies/indigenous_peoples/)

## **CHAPTER -4**

### **COLCLUSION AND RECOMMENDATIONS**

#### **4.1. Conclusion**

It is an established fact that not only IPs' individual and collective rights are violated and they are systematically excluded from CNP, but also their rights to life with dignity, right to ancestral lands, territories and resources have been seriously violated by CNP. Members of Bote, Majhi, Kumal, Darai and Tharus whose livelihood subsistence depend upon river and forests, are living in intimidation and fear since they are easily blamed as poachers, abettors, assisting poachers, illegally fishing, trapping, collecting forest products etc. These people are surrounded not only by aggressive animals but also with Army that make they feel extremely insecure and vulnerable.

The privileges of licenses for fishing provided by CNP Regulation to Bote, Majhi, Kumal, Darai and Tharu has been a subject of discretionary power of the Warden against the Regulation. There is no mechanism in place to file complaints against the arbitrary decisions of the Warden and illegal actions of the park authorities including army who snatch fishing net, fishing boats etc. without any reason. Many people complain that they faced false acquisition of using Mahajaal that is only used by outsiders. WWF does not work to address or stop human rights violations. Furthermore, their mechanisms do not allow meaningful consultation, participation and representation of Bote, Majhi, Kumal or Tharu communities. There is enough room and space for WWF to facilitate CNP authority to address human rights violations and conflict management as well as reconciliation between IPs, Local Communities and Parks authorities.

The conservation objectives, structures and behavior of authorities have created conflicts between Indigenous and local communities and Parks managers. The colonial model of conservation has resulted in social conflict and brutal violations of human rights. Although a rights-based paradigm to conservation has been advancing during the last decades, it apparently remains challenging to be applied. Rights-based conservation measures continue to be hampered by the human rights violations of IPs. There is a lack of de-jure and de facto recognition of IPs and of their rights in CNP arenas that is inconsistent to the Constitution, 2015 and NFDIN Act, 2002, and internationally recognized human rights laws.

However, though we lack overall quantitative numbers, based on the findings, the local consequences of these impositions of CNP on the lives of local IPs have been better documented. Summarizing the extensive literature and field study, IPs commonly experience that their situation is of gross human rights violations both individual and collective in nature.

Collective human rights violations include:

- Denial of rights to lands, territories and land dispossession.
- Forced eviction from traditional lands and territories as well as from their resettlement.
- Denial of access and use of natural resources.
- Prohibition and criminalization to continue traditional livelihoods (fishing, collection of foods and vegetables, medicinal plants from forest etc.).
- loss of property and no compensation and
- Disruption from spiritual sites and traditional knowledge.
- Cultural identity weakened and criminalization of cultural practices.
- Disruption of customary systems of environment management.

- Denial of political rights and the validity of customary social structures and institutions.
- Symbolic ties of social-cultural and ecological relationship to environment broken.
- Denial of participation in management structure of protected area.
- Denial of self or co-management of natural resources.

There are many other individual human rights violations such as extrajudicial killings, torture, sexual harassment, fraudulent (fake) marriage with Indigenous women, statelessness, threaten intimidation by CNP officials and Army. Park authorities enforced illegality where People are blaming IPs and naming them as “poachers,” “encroachers,” and “squatters” on their own traditional home land and are subject to petty tyrannies by Park officials and Army. With some exception, these human rights violations occurred on routine basis. There is a serious culture of impunity and it is quite challenging – if not impossible – for the victims to bring complaint against the perpetrators. Arbitrariness, absence of rule of law, and a kind of dictatorship imposed by the Warden of CNP, is quite contradictory to the Constitution of Nepal, which contains provisions regarding rule of law, access to justice and protection of human rights and fundamental freedoms.

Indigenous and local women are the ones to feel most insecure around the areas of CNP. In very few cases, action against perpetrators of sexual harassment, tortures, intimidation and assaults are taken by CNP officials and the Army. It clearly shows that the withdrawal of murder case of innocent Sikharam Chaudhary for the cause of boosting officials morale, not only increases impunity but also demonstrates racism against Tharus and other IPs, giving no recognition to their right to life with dignity and denial of access to justice and remedy.

The WWF Nepal has been engaged in the implementation of respective projects and programs with close collaboration of DNPWC and CNP for a long time. The authors of BuzzFeed and The Kathmandu Post have claimed that villagers in Nepal reported tortures, sexual assaults, and murders at the hands of Nepalese soldiers in CNP, who received assistance from the WWF to protect the area’s one-horned rhinoceroses and other endangered species **in the name of conservation.** The WWF even gave the army battalion an award for their efforts against poaching. The concerned authorities remain silent; in contrast IPs whose rights are directly violated are raising their voices on issues and concerns strongly.

Based on the key findings and source of injustice for IPs WWF have never looked into nor given attention to the situation faced by them including aforementioned human rights abuses and violations. In contrast, WWF have been involved in questionable practices and continued to partner and advocate for those guilty of abuse and torture that raised a serious question on the commitment to human rights as well as respecting its own social policies and safeguards such as poverty and conservation, conservation initiatives on human rights, gender policy statement, IPs and conservation: WWF statement of principles, mainstreaming WWF principles on IPs and conservation in project and program management, prevention of restriction of rights and involuntary relocation and resettlement of IPs and local communities. WWF has clearly not done their due diligence to ensure the implementation of their own policies.

Although the GoV is principally responsible for this state of affairs and the gross human rights violations, WWF also bears a major responsibility because of the support it has provided to the Government and because of its duty under their social policies and safeguards to respect the human rights of IPs and local communities affected by its operations and activities. Effective implementation of WWF's social policies in practice and their commitments can operationalize a human rights based approach to conservation.



## 4.2. Recommendations

### To the Government of Nepal (GoN)

1. Issue an urgent Order to DNPWC to allow the continuation of traditional livelihoods that includes fishing, collecting foods, vegetables and medicinal plants from the traditional lands of IPs which is concerted as the CNP.
2. Respect, Protect, support and uphold the rights IPs as recognized in international human rights law in undertaking all necessary measures for the effective implementation of CERD, UNDRIP and ILO Convention No. 169 in relation to management of PAs.
3. Provide lands to victims of forced eviction and displaced IPs during the establishment and expansion of the CNP whose lands were taken without FPIC, compensation and alternatives, implementing section 22 of the Land Acquisition Act, 1978. Only when this for factual reasons is not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation in contemporary market value.
4. Review and reform National Park and Wild Life Conservation Act, 1973 and associated rules, regulations and guidelines in line with fundamental rights guarantees in the Constitution of Nepal, 2015 that includes right to live with dignity (article 16); right to property (article 25); right to culture and language (26 and 32), right to participation (article 42 and article 17 51.j.8), ILO Convention No. 169, UNDRIP to implement rights of IPs and address ongoing issues, violation of human rights as well as abuses and problems in the context of PAs.
5. Ensure that environmental, legal and institutional frameworks with their obligations regarding the rights, interest and aspirations of IPs and human rights based approach that respect collective and individual human rights of IPs to conservation and management of Pas is implemented properly.
6. Provide and secure legal rights and other policy and administrative measures to recognize and guarantee the rights of IPs over their lands, territories and natural resources as enshrined in international human rights law.
7. Implement Durban Plan of Action agreed by the 5th IUCN World Parks Congress in September 2003, in particular outcomes 5/key target 8: "all existing and future protected areas shall be managed and established in full compliance with the rights of IPs and local communities" and outcomes 5/key target 9: "protected areas shall have representatives chosen by IPs and local communities in their management, proportionate to their rights and interests".
8. Obtain the FPIC with IPs establishing a FPIC mechanism through freely chosen representatives, in every decisions and development of activities of conservation initiatives which may affect them.
9. Carry out meaningful consultation with local communities, establishing a consultation mechanism through freely chosen representatives by IPs for meaningful participation and address their voice as well as concerns in decision making in matters that affect them.
10. Support and promote the co-management and self-management of protected areas system with effective as well as meaningful participation and collaborative partnership of IPs to achieve the common goals of sustainable development and conservation in order to ensure justice.

11. Comply and implement the judgments and decisions - including its recommendations and Directive Orders of the Supreme Court of Nepal and international human rights monitoring mechanisms regarding IPs' rights.
12. Provide redress and take action against past and contemporary human rights abuses and violations with establishment of accountability reparation and grievance handling mechanisms for Indigenous rights in the context of conservation. The mechanism must be accessible, culturally appropriate, independent, transparent and competent.
13. Reinvestigate the case of torture to death of Sikharam as well as others who died in custody with the formation of an independent commission and provide justice including, adequate compensation, punishment of perpetrators, and public apologies.

**To the conservation organization (WWF)**

1. Establish effective mechanisms for open dialogue, redress of grievances, and transparent exchange of information between WWF and through their freely chosen representatives by respective IPs.
2. Adopt clear human rights based approach policies, including on the rights of IPs and protected areas in conformity with their internationally recognized rights and implement these in shifting the new paradigm from paper to practice.
3. Review and adopt social policies on IPs, gender, Indigenous women, poverty, human rights, prevention of restriction of rights and involuntary relocation and resettlement of IPs and local communities in line with the ILO Convention No. 169, UNDRIPs, CBD, Agenda 21<sup>st</sup> and other decisions and recommendations, the 23rd General recommendations of Committee on CERD, in relation to implementation of conservation initiatives.
4. Obtain the FPIC with IPs establishing a FPIC mechanism through freely chosen representatives, in every decisions and development activities of conservation initiatives which may affect them.
5. Carry out meaningful consultation with IPs, establishing a consultation mechanism through freely chosen representatives by IPs for meaningful participation and address their voice as well as concerns in decision making in a matter that affect to them.
6. Provide trainings for conservation staff in both national and international levels -especially for those involved in implementation at the national and community level in ensuring effective dissemination of policies and they will be able understand and know how to apply these policies into practice.
7. Improve monitoring and due diligence mechanisms and include compliance to respect the rights of IPs in regular project assessments with transparent, participatory, and effective procedures to ensure that information obtained through monitoring and reporting is accessible in a transparent and safe process. Ensuring that victims speaking out will face no reprisals.
8. Develop mechanisms for partnerships and continuous engagement with IPs to ensure their full and effective participation in planning, implementing and monitoring conservation related initiatives including other relevant programs.
9. Establish user friendly whistle blower mechanism of WWF, where IPs can raise the alarm if situations occur and have a clear plan of action and processes for prompt response to the IPs' issues and concerns.

10. Provide financial and technical assistance to ensure a dignified life for the victims of human rights violations (including appropriate alternative livelihood options for IPs)

In particular conservation organization (WWF) - and donors<sup>174</sup> who fund conservation work should enable transforming conservation - a rights-based approach.

1. Make sure that human rights policies are adopted by conservation by WWF and monitor the application of the human rights based approach to conservation programs notably in relation to IPs rights.
2. Ensure protection of human rights is integral to conservation management, strategy and programs (internal human rights monitoring or partnering with human rights organizations), and actively advocate for respect for the rights of IPs with the governments and national agencies with whom WWF works.
3. Avoid and disinvest from conservation programs that pose a risk of human rights abuses, including by ceasing to partner with governments that systematically fail to respect and protect human rights, and make sure conservation programs have clear due diligence processes in place to ensure they do not finance, participate in, support or promote such projects.
4. Actively support the full protection of IPs' customary land and resource rights. Where conservation or related programs wish to include or affect IPs' lands, seek and obtain the FPIC of affected communities to ensure their program of work has the full support of all IPs, and not rely on government actors to carry these out.
5. Recognize IPs and communities as the key actors in securing biodiversity, and seek to support them in doing so, including by providing direct funding to better support IPs' own initiatives for conservation. Champion a community-led conservation model.
6. Ensure there are effective avenues for redress for past and future actions that do not meet the above criteria, and systematically (and independently) review past and current involvement in any human rights violations within conservation programs.

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<sup>174</sup> FPP and partners propose the recommendations to enable transforming conservation available at <https://www.forestpeoples.org/en/lands-forests-territories-rights-based-conservation/news-article/2019/transforming-conservation>

The detailed recommendation and overarching principles in Annex-2, is provided below is produced by FPP whereas the ideas of the FPP and its recommendations can be agreed upon in the context of new principles and practices for all conservation programs is available at <https://www.forestpeoples.org/sites/default/files/documents/Transforming%20Conservation%20%28full%20version%29%20-%20Forest%20Peoples%20Programme%20Mar%202019.pdf>

### **To the Nepal Army**

1. Take strong immediate action against those who are perpetrators of human rights violation in transparent manner respecting existing constitutional and legal provisions relating to human rights and fundamental freedoms as well as respecting international human rights standards of ILO Convention No 169 and United Nations Declaration on the Rights of IPs (UNDRIPs).
2. Establish a mechanism with mandate of receiving complains, surveillance of, monitor and appropriate action to avoid human rights violation and abuses and recommend for action against the perpetrators.
3. Conduct Series of Trainings on Human Rights and relevant instruments, including UNDRIPs, ILO Convention No. 169, to Armies, that deployed in CNP areas.

### **To National Human Rights of Commission (NHRC)**

1. Carry out investigation and make public reports on gross human rights violation and abuses in PA including Chitwan National Park in accordance with the Commission's mandate, perusing to section 12 of the NHRC Act 2012, applying its *sui moto* jurisprudence.
2. Carryout re-investigation of the case of torture to death of Sikharam as well as others who died in custody with formation of an independent commission and facilitate justice including, adequate compensation, punishment of perpetrators and public apologies.
3. Carry out investigations commissioning independent penal comprising Indigenous Women experts and others working on IPs rights including women issues in related to human rights violations, torture, sexual abuses and harassments, issue of citizenship against women living in CNP areas.

### **To IPs Commission and Tharu Commission in collaboration with National Foundation for Development of Indigenous Nationalities (NFDIN)**

1. Commission an independent review into the matters raised of recent allegations appearing in fact present finding mission report including other media and reports ongoing gross human rights violations associated with conservation activities, implemented by, or funded by WWF Nepal.
2. Establish a mechanism to monitor and evaluate programs and projects effectively, dealing with biodiversity conservation ensuring culturally-sensitive human rights based approach in order to reflect the desire and aspirations of IPs in policy-law-making, planning and implementation.
3. Prepare a framework of human rights based approach to conservation programs and projects notably in relation to the promotion and protection of the rights of IPs and make recommendations to the government,
4. Review and reform existing laws, regulations, policies, plans and programs related to biodiversity conservation, access to genetic resources and benefit sharing, forest, environment water, wetland, climate change/REDD including NPWC Act, 1973 from IPs perspectives recognizing their rights in line with the contemporary Constitution, standards of international human rights, in particular ILO Convention No. 169 and UNDRIPs and environmental law as Convention on Biological Diversity (CBD) and other related decisions and policies.
5. Provide support and facilitation for coordination and a regular dialogue and contact, two-way communication between government agencies, conservation

organizations/INGOs/donors and IPs organizations for effective information sharing and dissemination of information related to biodiversity conservation, natural resource management and climate change/Reducing Emissions from Deforestation and Forest Degradation (REDD).

6. Provide support and facilitation to form/establish and smooth operation of a loose network like "National Environmental Forum" of interested persons, conservation organizations/INGOs, government agencies and IPs for effective information sharing and dissemination on biodiversity conservation, natural resource management and climate change/REDD.

#### **National Women Commission**

1. Carry out Investigation and make public report on gross human rights violation and sexual abuses, harassment, mistreatment and tortures against to women in PA including CNP.

#### **To Nepal Federation of Indigenous Nationalities (NEFIN) and IPs' Organizations**

1. Strengthen capacity to use existing mechanisms to lobby the government in terms of complying to their international obligations and to ensure:
  - effective implementation of UNDRIPs and ILO Convention No. 169.
  - incorporation of international human rights commitments to protect IPs' rights into domestic laws, policies, plans and programs.
  - legal recognition of the rights of IPs over their lands, territories and natural resources as enshrined in international human rights law.
  - reformulating existing laws, policies, plans and programs that include, biodiversity conservation, access to genetic resources and benefit sharing, forest, environment, water, wetland, land and other natural resources, climate change/Reducing Emissions from Deforestation and Forest Degradation (REDD) and other relevant individual and collective rights to social, political, cultural and economic that are to be consistent with and to bring them, into conformity with obligations under international human rights laws.
2. Strengthen the own monitoring and evaluation of human rights abuses and violations in PAs, conservation programs and projects and prepare reports that expose human rights violations to the general public that more pressure to be exerted on the government and conservation organizations including WWF that are responsible for these kinds of developments.
3. Carry out the advocacy work into the matters raised of recent allegations appearing in fact finding mission report, media and other reports consistent with serious human rights abuses and violations associated with conservation activities, implemented by, or funded by donors, conservation organizations, including WWF.
4. Lobby with donors, conservation organizations in order to promote a rights based approach to conservation and management of PAs, climate change/REDD by government agencies and conservation organizations in assessing the impact of the conservation measures on the rights of IPs.
5. IPOs should be aware of the respect to decision making with effective and meaningful participation of respective communities who will be directly affected by decision making and activities. In this regard, IPOs should internalize the core thrust of ILO Convention No. 169.

## References

### **The following laws were reviewed;**

Government of Nepal. (2015). *The Constitution of Nepal*. Kathmandu: Government of Nepal, Ministry of Law, Justice and Parliamentary Affairs, Law Books Management Board.

Government of Nepal. (2017). *Criminal Procedural Code, 2017*

Government of Nepal. (1991). *Criminal Case Act, 1991*

Government of Nepal. (1977) *Land Acquisition Act 1977*

Government of Nepal. (1973) *National Parks and Wildlife Conservation Act, 1973*

**Annex : 1**

# निर्णय नं. ८५९२ - उत्प्रेषणयुक्त परमादेशसमेत

भाग: ५३ साल: २०६८ महिना: श्रावण अंक: ४  
 कैसला मिति : २०६७/१२/२३ ८२५

ने.का.प. २०६८, अड्क ४, निर्णय नं. ८५९२

सर्वोच्च अदालत संयुक्त इजलास  
 माननीय न्यायाधीश श्री खिलराज रेग्मी  
 माननीय न्यायाधीश श्री कृष्णप्रसाद उपाध्याय  
 संवत् २०६६ सालको रिट नं. WO-०३३८

आदेश मिति: २०६७/१२/२३/४

विषय: उत्प्रेषणयुक्त परमादेशसमेत ।

निवेदक: कास्की जिल्ला, हेम्जा गा.वि.स. वडा नं. ९ घर भै हाल वन तथा भू-संरक्षण मन्त्रालयमा सहायक वातावरण अधिकृत पदमा कार्यरत कमलजंग कुँवर

विरुद्ध

विपक्षी: वन तथा भू-संरक्षण मन्त्रालय, समेत

§ अख्तियार दुरुपयोग अनुसन्धान आयोगले सजाय किटान नगरी कारवाहीको निर्देशनसम्म गर्न पाउने र अख्तियारवालाले व्यक्तिलाई उसको क्रियाको आधारमा कुन सजाय प्रस्ताव गर्न उपयुक्त हुन्छ सो सजाय प्रस्ताव गरी स्पष्टीकरण सोध्ने र सजाय गर्न पाउने गरी अधिकारको विभाजन गरेको हो भनी अर्थ गर्नु कानूनी र न्यायिक हुन आउने ।

(प्रकरण नं.६)

§ अख्तियार दुरुपयोग अनुसन्धान आयोगले, आफू समक्ष आएको उजूरीमा छानबीन अनुसन्धान तहकीकात गरी सार्वजनिक पदमा आसिन व्यक्तिले अनुचित कार्य गरी अख्तियारको दुरुपयोग गरेको देखेमा विभागीय सजाय गर्न निर्देशन दिने र भ्रष्टाचार भएको देखिएमा भ्रष्टाचारमा मुद्दा चलाउने निर्णय गरी मुद्दा दर्ता गर्नु पर्दछ । आयोग वस्तुतः यिनै प्रयोजनका लागि स्थापित संवैधानिक निकाय हो । नेपालले प्रतिद्वन्दात्मक कानूनी पद्धति (Adversarial Legal System) अवलम्बन गरेको छ । यो पद्धति अवलम्बन गरेको मुलुकमा अभियोजन र अनुसन्धान गर्ने निकाय वा पक्षले मुद्दाको निर्णय गर्न नसक्ने ।

§ आयोगले सजाय किटान गरी निर्देशन दिने र अख्तियारवाला त्यसको प्रक्रिया पुन्याई कार्यान्वयन गर्नेसम्मको काम गर्ने निकाय मान्ने हो भने अनुसन्धानकर्ता नै निर्णयकर्ताको रूपमा उभिने र वास्तविक रूपमा विभागीय कारवाही गर्ने पदाधिकारी निर्णय कार्यान्वयनकर्ताको रूपमा सीमित रहन पुग्ने ।

(प्रकरण नं.७)

§ अनुसन्धान तहकीकात र अभियोजन गर्ने निकाय नै निर्णयकर्ता हुन सिद्धान्ततः नमिल्ने भएको कारण कुनै व्यक्तिउपर उजूर परेमा सो व्यक्तिले के कस्तो काम गरी अख्तियारको दुरुपयोग गरेको हो, छानबीन अनुसन्धान गरी, अख्तियारको दुरुपयोग गरेको देखिएमा त्यसलाई पुष्टि गर्ने आधार र कारण खोली विभागीय कारवाही गर्न निर्देशन दिनसम्म पाउने हुँदा अख्तियार दुरुपयोग अनुसन्धान आयोगले नै सजायसम्बन्धी कानूनको दफा र सजाय किटान गरी सजाय गर्न निर्देशन गर्न पाउँछ भन्न मिल्ने ।

(प्रकरण नं.८)

निवेदकको तर्फबाट: विद्वान अधिवक्ता श्री हरिप्रसाद उप्रेती

विपक्षी तर्फबाट: विद्वान उपन्यायाधिवक्ता श्री रमेश शर्मा पौडेल

अवलम्बित नजीर:नेकाप २०६४, नि.नं.७८०२, पृ.१

सम्बद्ध कानून:

§ नेपालको अन्तरिम संविधान, २०६३ को धारा १२० (१), (३), (४)

§ अख्तियार दुरुपयोग अनुसन्धान आयोग ऐन, २०४८ को दफा ११(१), (२), १२(१)

§ निजामती सेवा ऐन, २०४९ को दफा ५९(क)(३), ६०(ग)

### आदेश

**न्या.खिलराज रेग्मी:** नेपालको अन्तरिम संविधान, २०६३ को धारा ३२ र १०७(२) बमोजिम दायर हुन आएको प्रस्तुत निवेदनको संक्षिप्त तथ्य र ठहर यस प्रकार छः-

म निवेदक २०४८।४।१२ मा नेपाल वन सेवा जनरल फरेष्ट्री समूहको रा.प.अनं.प्रथम (प्रा.) श्रेणीको रेञ्जर पदमा सेवा प्रवेश गरी काम काज गर्दै आएकोमा मिति २०५६।७।१२ देखि खुला प्रतियोगिताबाट सोही सेवा, नेशनल पार्क्स एण्ड वाइल्ड लाईफ समूहको रा.प.तृ.(प्रा) श्रेणीको सहायक संरक्षण अधिकृतमा नियुक्ति पाई विभिन्न कार्यालयहरू हुँदै हाल वन तथा भू-संरक्षण मन्त्रालय अन्तर्गत कार्यरत रहेको छु । यही क्रममा म तत्काल चितवन राष्ट्रिय निकुञ्जको कार्यालयको कायम मुकायम प्रमुख संरक्षण अधिकृतको रूपमा कार्यरत रहेका वखत सो कार्यालयमा रहेको गैडाको खाग हराएको विषयलाई लिएर सो खाग म समेतका कर्मचारीले मिलेमतो गरी विक्री गरेको भन्ने उजूरीको सम्बन्धमा अनुसन्धान गर्न बयानको लागि अख्तियार दुरुपयोग अनुसन्धान आयोगले मिति २०६४।११।५ मा पत्र पठाई सम्पर्क राख्नको लागि जानकारी गराएकोले म अख्तियार दुरुपयोग अनुसन्धान आयोगमा उपस्थित भई आफ्नो जो भएको सही सत्य व्यहोराको बयान गरेको थिएँ । मेरो बयान लिई सकेपछि अख्तियार दुरुपयोग अनुसन्धान आयोगले मिति २०६५।८।१० को पत्रबाट स्पष्टीकरण माग गरेकोमा सो स्पष्टीकरणको युक्तियुक्त जवाफ मिति २०६५।

८।१६ मा आयोग समक्ष पेश गरेको थिएँ । त्यसपछि सो आयोगले मिति २०६५।१२।२८ को पत्रबाट वन तथा भू-संरक्षण मन्त्रालयलाई जानकारी एवं आवश्यक कार्यार्थ भनी मलाई अख्तियार दुरुपयोग अनुसन्धान आयोग ऐन, २०४८ को दफा ३(ख) र (छ) अनुसार कुनै निर्णय वा आदेश गर्दा अपनाउनु पर्ने कार्यविधिको पालना नगरेको तथा आफ्नो पदको प्रकृतिअनुसार पालना गर्नुपर्ने कुनै पदीय कर्तव्य पालना नगरी अनुचित कार्य गरेको देखिदा निजलाई तत्काल निजामती सेवा (दोस्रो संशोधन) सहितको ऐन, २०४९ को दफा ६०क को देहाय (ग) को कसूरमा ऐ. ऐनको दफा ५९ को खण्ड (क) को (४) अनुसार विभागीय कारवाही गर्नको लागि लेखी पठाएको रहेछ । सो पत्रबमोजिम कारवाही नहुँदैको अवस्थामा अख्तियार दुरुपयोग अनुसन्धान आयोगले पुनः मिति २०६६।४।२५ मा अर्को पत्र पठाई पहिले पठाएको पत्रमा उल्लेख भएका कानूनको दफाहरूलाई सच्चाउँदै निजामती सेवा ऐनको दफा ५९ को खण्ड (क) को (३) अनुसार विभागीय कारवाही गर्न निर्देशन दिएको रहेछ ।

आयोगको निर्देशनबमोजिम मन्त्रालयले निजामती सेवा ऐनको दफा ५९ को खण्ड (क) को (३) अनुसार विभागीय कारवाही किन नगर्ने भनी स्पष्टीकरण सोधी मलाई विभागीय कारवाही र सजाय गर्न लागेको छ । सजाय कितान गरेर विभागीय कारवाहीको लागि लेखी पठाउने अधिकार अख्तियार दुरुपयोग अनुसन्धान आयोगलाई अन्तरिम संविधान एवं प्रचलित अन्य कुनै कानूनले पनि प्रदान गरेको छैन । आफूलाई अधिकार नै नभएको विषयमा जवर्जस्ती अधिकारक्षेत्र कायम गरी विभागीय कारवाही र सजाय गर्न सक्ने अधिकारीको अधिकारक्षेत्रमाथि नै अतिक्रमण हुने गरी पत्र लेखिएको छ । अख्तियार दुरुपयोग अनुसन्धान आयोगले वन तथा भू-संरक्षण मन्त्रालयलाई पठाउँदा मलाई जुन कानूनबमोजिम जे जस्तो सजाय गर्न निर्देशन दिएको हो, सो मन्त्रालयले पनि त्यही कानूनबमोजिम त्यस्तै सजाय गर्ने गरी उक्त स्पष्टीकरण सोधिएको छ ।

अख्तियार दुरुपयोग अनुसन्धान आयोग ऐनको दफा १२ को उपदफा (२) मा अख्तियार दुरुपयोग अनुसन्धान आयोगबाट लेखी आएमा अख्तियारवालाले उपयुक्त सजाय प्रस्ताव गरी तीन महिनाभित्र प्रचलित कानूनबमोजिम विभागीय कारवाही गरी सोको जानकारी आयोगलाई दिनु पर्नेछ भन्ने व्यवस्था रहेको र उपदफा (३) मा मनासिब कारण परेमा बाहेक अख्तियारवालाले विभागीय कारवाही नगरेमा विभागीय कारवाही नगर्ने अधिकारीलाई नै अनुचित कार्य गरेको भनी आयोगले कारवाही गर्न सक्ने छ भन्ने व्यवस्था रहेको हुँदा वन मन्त्रालयका सचिवले आफैँउपर कारवाही हुन सक्ने ठानी उक्त स्पष्टीकरण सोधी कारवाही अगाडि बढाएको देखिन्छ । अख्तियार दुरुपयोग अनुसन्धान आयोगले म निवेदकउपर एकातिर अख्तियार दुरुपयोग अनुसन्धान आयोग ऐनको दफा ३ को खण्ड (ख) र (छ) को अनुचित कार्य गरेको भन्ने आरोप लगाएको छ भने अर्कोतिर निजामती सेवा ऐनको दफा ६०क को देहाय (क) को कसूर गरेको भन्ने आरोप लगाएको छ । वस्तुतः अख्तियार दुरुपयोग अनुसन्धान आयोग ऐनको दफा ३ को खण्ड (ख) मा कुनै निर्णय वा आदेश गर्दा बाध्यात्मक रूपले अपनाउनु पर्ने कार्यविधिको पालना नगरेको भन्ने व्यवस्था रहेको छ । तर मलाई उक्त आरोप लगाइएको भए पनि मैले के कुन आदेश वा निर्णय गर्दा बाध्यात्मक रूपले अपनाउनु पर्ने के कुन कार्यविधिको पालना गरेन भन्ने विवरण खुलाउन सकेको अवस्था छैन । त्यसरी नै खण्ड (छ) मा आफ्नो पदको प्रकृतिअनुसार पदीय कर्तव्य पालना नगरेको भन्ने अवस्था रहेको छ, सो आरोप स्थापित हुने वस्तुनिष्ठ र पारदर्शी आधार विपक्षी अख्तियार

दुरुपयोग अनुसन्धान आयोगले देखाउन सकेको छैन । अनुचित कार्य गरेको भनी लिएका उक्त दुई आधारहरू र निजामती सेवा ऐनको दफा ६०क को देहाय (क) को आधार एक अर्कामा मिल्ने प्रकृतिका नहुँदा जवर्जस्ती आरोपहरू लगाई उक्त विभागीय कारवाहीको प्रक्रिया अगाडि वढाउनु निश्चित पनि कानूनसम्मत हुन सक्दैन ।

मैले पेश गरेको स्पष्टीकरणको सम्बन्धमा अख्तियार दुरुपयोग अनुसन्धान आयोगले मलाई कुनै प्रतिक्रिया नै नदिई वन मन्त्रालयलाई विभागीय कारवाहीका लागि लेखी पठाउने निर्णय गर्दा यति ठूलो अपरेशनमा खटिएपश्चात् भए गरेको कामकारवाहीको विवरण चाँडोभन्दा चाँडो माथिल्लो निकायमा जाहेर गर्न नसक्नुको कारण खुलाउन नसकेको, चोरी शिकारी नियन्त्रणको काममा प्रयोग भएको एकसिंगै गैडाको सक्कली खाग कार्यालयको कर्मचारीलाई भरपाई गरी पठाएको भनी पन्छिन खोजेको, बरामद भएका सरसामानहरू मध्ये नगद रु.६ लाख कार्यालयमा बुझाए तापनि वरामद भएको यार्चागुम्बा ८ के.जी., ४ प्रकारको धुलो पदार्थ १८ के.जी., शंकास्पद खागको धुलो ३ के.जी.समेत परीक्षणको लागि समयमानै विधि विज्ञान प्रयोगशालामा नपठाउनुको कारण स्पष्ट हुन नसकेको, राष्ट्रिय निकुन्ज तथा वन्यजन्तु संरक्षण ऐन, २०२९ को दफा ३० बमोजिम ऐनअन्तर्गतका अनुसन्धान तहकीकातको जानकारी कुनै निकायलाई दिनु पर्नेछ भनी उल्लेख नभएको भनी कर्तव्यबाट पन्छिन खोजेको भन्ने व्यहोरा उल्लेख गरी सोही व्यहोरा राखी वन मन्त्रालयमा पठाएको छ । तर उक्त विषयमा मलाई आफ्नो सफाइ पेश गर्ने मौका नै दिइएको छैन ।

माथि प्रकरणहरूमा उल्लिखित तथ्य र कानूनको आधारमा विपक्षीहरूको उक्त कामकारवाही र निर्णयबाट मलाई अन्तरिम संविधानको धारा १२(३)(च), १३(१) र १९(१) द्वारा प्रदत्त मौलिक हक एवं माथि उल्लिखित निजामती सेवा ऐन र निजामती सेवा नियमावलीद्वारा प्रदत्त कानूनी हकहरूको समेत हनन् हुन गएकोले विपक्षी अख्तियार दुरुपयोग अनुसन्धान आयोगको मिति २०६५।१२।२५ को निर्णय र आयोगको मिति २०६५।१२।२८ र मिति २०६६।४।२५ को पत्रबमोजिम वन मन्त्रालयले मिति २०६६।६।१ को पत्रबाट सोधिएको स्पष्टीकरणलगायत मउपर विभागीय कारवाही गर्न लागिएको सम्पूर्ण कामकारवाही एवं निर्णय समेतलाई उत्प्रेषणको आदेशद्वारा बदर गरी म निवेदकलाई गर्न लागिएको विभागीय कारवाही नगर्नु नगराउनु भनी विपक्षीहरूको नाममा प्रतिषेधको आदेशलगायत अन्य जो चाहिने उपयुक्त आज्ञा आदेश जारी गरी पूर्ण न्याय पाऊँ । प्रस्तुत मुद्दाको अन्तिम टुङ्गो नलागेसम्म विपक्षीहरूबाट मलाई गर्न लागिएको विभागीय सजाय सम्बन्धी कारवाही अगाडि नबढाउनु यथास्थितिमा रहन दिनु भनी विपक्षीहरूको नाममा अन्तरिम आदेश समेत जारी गरिपाऊँ भन्ने कमलजंग कुँवरको मिति २०६६।७।९ को निवेदन ।

यसमा के कसो भएको हो ? निवेदकको मागबमोजिमको आदेश किन जारी हुन नपर्ने हो ? यो आदेश प्राप्त भएका मितिले बाटाको म्याद बाहेक १५ दिनभित्र लिखित जवाफ पठाउनु भनी विपक्षीहरूलाई सूचना पठाई लिखित जवाफ परेपछि वा अवधि नाघेपछि नियमानुसार पेश गर्नु । अन्तरिम आदेशमा छलफल गर्ने प्रयोजनका लागि विपक्षीहरूलाई सूचना दिई मिति २०६६।७।१८ मा पेश गर्नु भन्ने यस अदालतको मिति २०६६।७।१० को आदेश ।

अन्तरिम आदेश सम्बन्धमा विचार गर्दा अख्तियार दुरुपयोग अनुसन्धान आयोगको मिति २०६५।१२।२५ को निर्णयबाट यी निवेदकलाई निजामती सेवा ऐन, २०४९ को दफा ५९ को खण्ड (क) को (३) बमोजिमको विभागीय सजाय गर्नु भनी किटान गरी लेखी पठाएको देखिएको अवस्था हुँदा तत्काल अन्तरिम आदेश जारी नभएमा रिट

निवेदकले उठाएको विवादको विषय निष्प्रयोजन हुने अवस्था देखिएकोले प्रस्तुत रिट निवेदनको अन्तिम टुङ्गो नलागेसम्म अख्तियार दुरुपयोग अनुसन्धान आयोगको उक्त मिति २०६५।१२।२५ को निर्णयबमोजिम गर्न लागिएको विभागीय सजायको कारवाही समेत हाल नगर्नु नगराउनु भनी सर्वोच्च अदालत नियमावली, २०४९ को नियम ४१(१) बमोजिम विपक्षीहरूको नाममा अन्तरिम आदेश जारी गरी दिएको छ भन्ने यस अदालतको मिति २०६६।७।१८ को आदेश ।

निवेदक समेतले अख्तियारको दुरुपयोग गरी संरक्षित वन्यजन्तु एकसिंगे गैडाको खाग गैरकानूनी तवरले विक्री वितरण गरी भ्रष्टाचार गरेको भन्ने उजूरीका सम्बन्धमा आवश्यक अनुसन्धान गरी आयोगको मिति २०६५।१२।२५ को बैठकबाट निजले यति ठूलो अपरेशनमा खटिएपश्चात् भए गरेको कामकारवाहीको विवरण चाँडोभन्दा चाँडो माथिल्लो निकायमा जाहेर गर्न नसक्नुको कारण खुलाउन नसकेको, चोरी शिकारी नियन्त्रणको क्रममा प्रयोग भएको एकसिंगे गैडाको सक्कली खाग कार्यालयको कर्मचारीलाई भरपाई गरी पठाएको भनी पन्छिन खोजेको, बरामद सरसामानहरू मध्ये नगद रु.६ लाख कार्यालयमा बुझाए पनि वरामद भएको यार्चागुम्बा ८ के.जी., ४ प्रकारका धुलो पदार्थ १८ के.जी. र शंकास्पद खागको धुलो ३ के.जी. परीक्षणका लागि समयमानै विधिविज्ञान प्रयोगशाला नपठाउनुको कारणको सम्बन्धमा स्पष्ट हुन नसकेको, राष्ट्रिय निकुञ्ज तथा वन्यजन्तु संरक्षण ऐन, २०४९ को दफा ३० बमोजिम ऐनअन्तर्गतको अनुसन्धान तहकीकातको जानकारी कुनै निकायलाई दिनुपर्नेछ भनी उल्लेख नभएको भनी पन्छिन खोजेको देखिदा निजले पेश गरेको स्पष्टीकरणको जवाफ सन्तोषजनक रहेको देखिएन । तसर्थ निजले गरेको सो कार्य अख्तियार दुरुपयोग अनुसन्धान आयोग ऐन, २०४८ को दफा ३(ख) र ३(छ) अनुसार कुनै निर्णय वा आदेश गर्दा अपनाउनु पर्ने कार्यविधिको पालना नगरेको तथा आफ्नो पदको प्रकृतिअनुसार पालना गर्नुपर्ने कुनै पदीय कर्तव्य पालन नगरी अनुचित कार्य गरेको देखिदा निजलाई विभागीय कारवाही गर्नका लागि अख्तियार दुरुपयोग अनुसन्धान आयोग ऐन, २०४८ को दफा १२(१) बमोजिम अख्तियारवालालाई लेखी पठाउने....” भन्ने समेतको निर्णय भै आवश्यक कारवाहीको लागि वन तथा भू-संरक्षण मन्त्रालयमा लेखी पठाएको हो ।

निवेदकको कामकारवाहीबाट अख्तियार दुरुपयोग गरेको देखिन आई स्पष्टीकरण पेश गर्ने मौका प्रदान गरी स्पष्टीकरण सन्तोषजनक नलागेमा आयोगले सचेत गराउन वा कसूरको मात्राअनुसार कारण र आधार खुलाई विभागीय सजाय गर्न अख्तियारवालालाई लेखी पठाउन सक्ने अधिकार अख्तियार दुरुपयोग अनुसन्धान आयोग ऐन, २०४८ को दफा १२(१) ले आयोगलाई प्रदान गरेको छ । विभागीय कारवाहीको लागि वन मन्त्रालयमा लेखी पठाउँदा निजामती सेवा ऐन, २०४९ को दफा ५९(क) को (३) बमोजिम सजाय किन नगर्ने भनी स्पष्टीकरण मागिएकोमा टाइपको त्रुटिले ५९(क)(४) हुन गएकोमा २०६६।४।२५ मा सच्चाउने पत्र लेखेको हो । सो कार्यबाट निवेदकको हकमा आघात नपुग्ने हुँदा २ पटक विभागीय कारवाही गर्न लेखी पठाएको भन्न मिल्दैन । निवेदकले आफ्नो कार्य निजामती सेवा ऐन, २०४९ को दफा ६० को (क) र (घ) बमोजिम नसिहत दिनेसम्मको भनी स्वीकार गरेको अवस्थामा आयोगले ६०क को देहाय (क) को आधार एक अर्कोमा मिल्ने प्रकृतिका हुँदा सो कारवाही अन्यथा हो भन्न मिल्दैन । पक्षले पेश गरेको स्पष्टीकरणमा प्रतिक्रिया दिनुपर्ने कानूनी व्यवस्था समेत नभएको हुँदा प्रतिक्रिया नदिएको भन्ने आधार कानूनविपरीत छ । अख्तियार दुरुपयोग अनुसन्धान आयोग ऐन, २०४८ को दफा ३५(ग) अनुसार आयोगको निर्णयमा पुनरावेदन

लग्ने व्यवस्था भएकोमा रिट क्षेत्रमा प्रवेश गर्न समेत मिल्दैन । तसर्थ निवेदन खारेज गरिपाउँ भन्ने अख्तियार दुरुपयोग अनुसन्धान आयोग र आफ्नो तर्फबाट आयोगका सचिव भगवतीकुमार काफ्लेले पेश गरेको मिति २०६६।८।४ को लिखित जवाफ ।

निवेदक राष्ट्रिय निकुञ्ज तथा वन्यजन्तु संरक्षण विभाग अन्तर्गतको राष्ट्रिय निकुञ्जको कायम मुकायम प्रमुख संरक्षण अधिकृतको पदमा कार्यरत रहँदा चोरी शिकारी नियन्त्रणको कार्यमा प्रयोग भएको गैडाको सक्कली खाग हराएको सम्बन्धमा उजूरपर्दा अख्तियार दुरुपयोग अनुसन्धान आयोगले सो सम्बन्धमा छानबीन गरी अख्तियार दुरुपयोग अनुसन्धान आयोग ऐन, २०४८ को दफा १२ बमोजिम कमलजंग कुँवरलाई विभागीय सजाय गर्न लेखी आएमुताविक यस मन्त्रालयबाट निवेदकलाई सफाइ पेश गर्न लगाउन मिति २०६६।५।१४ मा निर्णय भै स्पष्टीकरण सोधिएको हो । आयोगलाई विभागीय कारवाही गर्न लेखी पठाउने अख्तियार भएको र सोअनुसार कावाहीको प्रक्रिया शुरु गरेको कार्य कानूनसम्मत छ । यसबाट निवेदकको हकमा आघात नपुग्ने हुँदा रिट निवेदन खारेज गरिपाउँ भन्ने वन तथा भू-संरक्षण मन्त्रालय र आफ्नो तर्फबाट ऐ. का सचिव युवराज भुसालले मिति २०६६।९।२ मा पेश गर्नु भएको लिखित जवाफ ।

नियमबमोजिम पेश भएको प्रस्तुत निवेदनमा निवेदकको तर्फबाट उपस्थित विद्वान अधिवक्ता श्री हरिप्रसाद उप्रेतीले मेरो पक्षले अपराधी पत्ता लगाउने प्रयोजनका लागि गैडाको सक्कली खाग प्रयोग गरेका थिए । खाग अर्को कर्मचारीले बुझेको भै खागका सम्बन्धमा सतर्क हुँदाहुँदै पनि सो खाग हराउन पुगेको थियो । त्यस्तो स्थितिमा उजूर परेकोमा अख्तियार दुरुपयोग अनुसन्धान आयोगले मेरो पक्षलाई कारवाही गर्न निर्देशन दिएको छ । विभागीय कारवाही गर्नुपर्ने देखेको अवस्थामा पनि निर्देशन दिने अधिकारअन्तर्गत विभागीय कारवाही गर्न निर्देशन दिदा आयोग ले सजाय किटान गरी निर्देशन गर्न पाउँदैन । सजाय किटान गरी निर्देशन दिएमा अख्तियारवालाले आफ्नो अधिकार र विवेक प्रयोग गरी सजाय प्रस्ताव गर्न र सजाय गर्न पाउँदैन । यसबाट सम्बन्धित विभागको अधिकार अतिक्रमण हुन्छ भने कर्मचारीलाई अन्याय पर्न जान्छ । आयोगले सजाय किटान गरी निर्देशन दिन नपाउने भएकाले सजाय किटान गरी कारवाही गर्न गरेको अख्तियारको निर्णय, निर्देशन र सोअनुसार सजाय गर्न वन तथा भू-संरक्षण मन्त्रालयले मागेको स्पष्टीकरण लगायतको कामकारवाही त्रुटिपूर्ण हुँदा सो निर्णय र सो बमोजिमका पत्राचार उत्प्रेषणको आदेशद्वारा बदर हुनुपर्छ भन्ने र विपक्षी नेपाल सरकारको तर्फबाट उपस्थित विद्वान उपन्यायाधिवक्ता श्री रमेश शर्मा पौडेलले निवेदकउपर परेको उजुरीमा छानबीन गर्दा विभागीय कारवाही गर्नुपर्ने देखी आयोगले आफूलाई प्राप्त अधिकार प्रयोग गरी विभागीय कारवाही गर्न सम्बन्धित मन्त्रालयमा लेखी पठाएको हो । कानूनबमोजिमको कारवाही गरेको हो कुनै त्रुटि भएको छैन । आयोगको निर्णयमा चित्त नबुझे निवेदकले विशेष अदालतमा पुनरावेदन गर्नुपर्नेमा रिट क्षेत्र प्रवेश गरेको मिलेको छैन, रिट खारेज हुनुपर्छ भनी गर्नु भएको बहस सुनियो ।

२. निर्णयतर्फ विचार गर्दा म निवेदक चितवन राष्ट्रिय निकुञ्ज कार्यालयको का.मु.संरक्षण अधिकृतको रुपमा कार्यरत रहेको समयमा अपराधी पत्ता लगाउने प्रयोजनको लागि कार्यालयबाट गैडाको खाग निकालेकोमा सो खाग हराएको विषयलाई लिएर म समेतका कर्मचारीले मिलेमतो गरी विक्री गरेको भन्ने उजुरीको सम्बन्धमा आयोगले छानबीन गरी मैले निर्णय वा आदेश गर्दा अपनाउनु पर्ने कार्यविधि पालना नगरेको वा पदीय कर्तव्य पालना नगरी

अनुचित कार्य गरेको देखिदा भनी अख्तियार दुरुपयोग अनुसन्धान आयोग ऐन, २०४८ को दफा १२(१) को अधिकार प्रयोग गरी निजामती सेवा ऐन, २०४९ को दफा ६०क को देहाय(ग) को अभियोगमा ऐ ऐनको दफा ५९(क) को (३) अनुसार अख्तियारवाला वन तथा भू-संरक्षण मन्त्रालयलाई विभागीय कारवाही गर्न निर्देशन दिएको रहेछ । मलाई निजामती सेवा ऐन, २०४९ को दफा ६०क को देहाय (ग) को कसूर गरेको भनी दोष लगाइएको छ । मैले वन्यजन्तुको चोरी शिकारी,डकैती गर्नेलाई कारवाही गरी आएको, त्यसै विषयमा अपराधीलाई फसाई अपराधिलाई पक्राउ गर्ने अपरेशनअन्तर्गत गैडाको खाग लिई गएकोमा, खाग चोरी भएको वा छुटेको कारण हराएको भनी विवरण पेश गर्दागर्दै पनि सो कुरालाई नसुनी मउपर अनुचित कार्य गरेको भनी विभागीय सजाय गर्न आयोगले निर्देशन गरेको छ । मउपर कारवाही गर्ने अवस्था नै छैन भनी मैले भनेको तथ्यलाई स्वीकार नगरी आयोगले कारवाही गर्न निर्देशन दिनुपर्ने देखेमा पनि विभागीय कारवाही गर्न अख्तियारवालालाई सामान्य निर्देशन गर्नसम्म सक्ने हो । दफा र सजाय किटान गरी निर्देशन गर्न पाउने होइन । दफा नै किटान गरी निर्देशन दिएको आधारमा वन तथा भू-संरक्षण मन्त्रालयले कानूनतः आफूलाई प्राप्त अधिकार प्रयोग गर्न नसकी आयोगको निर्देशनको आधारमा कारवाही प्रारम्भ गरेको छ । आयोगको त्रुटिपूर्ण निर्णय, निर्देशन र सोको आधारमा गर्न लागेको कारवाही त्रुटिपूर्ण हुँदा, ती सबै कामकारवाही समेत उत्प्रेषणको आदेशले बदर गरी मउपर गर्न लागेको कारवाही नगर्नु नगराउनु भनी विपक्षीहरूका नाममा प्रतिषेधको आदेश जारी गरिपाउँ भन्ने निवेदन र निवेदकले अपराधी पत्ता लगाई पक्राउ गर्ने उद्देश्यले कार्यालयमा भएको गैडाको खाग कार्यालयबाट निकाली लगेकोमा सो खाग समेत हराई वा चोरी गराई नोक्सान गरेकोमा निवेदकउपर भ्रष्टाचारको उजूर परेको कारण छानबीन गर्दा निवेदकले अनुचित कार्य गरी अख्तियारको दुरुपयोग गरेको देखिदा निजलाई अख्तियार दुरुपयोग अनुसन्धान आयोग ऐन, २०४८ को दफा १२(१) अनुसार अख्तियार प्राप्त अधिकारीलाई विभागीय कारवाही गर्न लेखी पठाएको र सो अनुसार वन मन्त्रालयले कारवाही प्रारम्भ गरेको हो । अख्तियार दुरुपयोग अनुसन्धान आयोगले निवेदकलाई विभागीय कारवाही गर्न गरेको निर्णय एवं निर्देशन र सोअनुसार वन मन्त्रालयले माग गरेको स्पष्टीकरण कानूनसम्मत हुँदा रिट निवेदन खारेज हुनुपर्छ भन्ने लिखित जवाफ भएको प्रस्तुत निवेदनमा निवेदकलाई विभागीय कारवाही गर्न सजाय किटान गरी लेखी पठाउने निर्णय गर्न र सो अनुसार वन तथा भू-संरक्षण मन्त्रालयले कारवाही गर्न मिल्ने हो कि होइन ? भन्ने विषयमा विवेचना गरी निवेदकको मागअनुसारको आदेश जारी गर्नुपर्ने हो कि होइन ? भनी निर्णय दिनुपर्ने हुन आएको छ ।

३. प्रस्तुत निवेदनमा निवेदकउपर अख्तियार दुरुपयोग अनुसन्धान आयोगले विभागीय कारवाही गर्न निजामती सेवा ऐन, २०४९ले व्यवस्था गरेको विभागीय सजायको दफा किटान गरी कारवाही गर्नु भनी वन तथा भू-संरक्षण मन्त्रालयलाई निर्देशन दिएको देखिन्छ । सो निर्णय र निर्देशनको आधारमा सोही दफा अनुसारको कारवाही किन नगर्ने भनी वन तथा भू-संरक्षण मन्त्रालयले निवेदकलाई स्पष्टीकरण सोधेको देखिन्छ । निवेदकले आयोगले यदि मलाई कारवाही गर्ने देखेको हो भने पनि सामान्य रूपमा अर्थात् सम्बन्धित अख्तियारवालाले स्वतन्त्र रूपमा अधिकार प्रयोग गरी कारवाही गर्न पाउने गरी विभागीय सजाय गर्न निर्देशनसम्म दिन पाउने हो, अख्तियारवालाले आफ्नो अधिकार प्रयोग गर्न नपाउने गरी सजाय किटान गरी कारवाही गर्न निर्देशन गर्न पाउने होइन र त्यसरी दिएको निर्देशनको आधारमा कारवाही गर्नु न्यायोचित समेत हुँदैन भनी आयोगको निर्णय र कारवाहीलाई चुनौती दिएको देखिन्छ । आयोगलाई

विभागीय कारवाही गर्न निर्देशन दिने अधिकार अन्तर्गत अख्तियारवालालाई कस्तो प्रकृतिको आदेश दिन पाउने हो ? र त्यसकै आधारमा विभाग वा मन्त्रालयले निर्देशनको हु-बहु आधारमा कारवाही गर्नुपर्ने हो वा होइन ? भन्ने विषयमा उठेको विवादको सन्दर्भमा आयोगलाई के कस्तो निर्देशन दिन पाउने अधिकार रहेछ भनी विवेचना गर्नुपर्ने देखिन आयो ।

४. नेपालको अन्तरिम संविधान, २०६३ को भाग ११ मा अख्तियार दुरुपयोग अनुसन्धान आयोगको व्यवस्था गरेको देखिन्छ । संविधानको धारा १२०(१) मा “कुनै सार्वजनिक पद धारण गरेको व्यक्तिले अनुचित कार्य वा भ्रष्टाचार गरी अख्तियारको दुरुपयोग गरेको सम्बन्धमा अख्तियार दुरुपयोग अनुसन्धान आयोगले कानूनबमोजिम अनुसन्धान र तहकीकात गर्न गराउन सक्ने” र धारा १२०(४)मा “भ्रष्टाचार मानिने कुनै काम गरेको देखिएमा अख्तियार दुरुपयोग अनुसन्धान आयोगले त्यस्तो व्यक्ति र अपराधमा संलग्न अन्य व्यक्तिउपर कानूनबमोजिम अधिकारप्राप्त अदालतमा मुद्दा दायर गर्न गराउन सक्ने ”व्यवस्था गरेको देखिन्छ । त्यसैगरी धारा १२०(३) मा“... सार्वजनिक पद धारण गरेको कुनै व्यक्तिले कानूनबमोजिम अनुचित कार्य मानिने कुनै काम गरी अख्तियारको दुरुपयोग गरेको देखिएमा अख्तियार दुरुपयोग अनुसन्धान आयोगले निजलाई सचेत गराउन वा विभागीय कारवाही वा कानूनमा व्यवस्था भएबमोजिम अन्य आवश्यक कारवाहीको लागि अख्तियारवाला समक्ष लेखी पठाउन सक्ने” र धारा १२०(५)मा “...सार्वजनिक पद धारण गरेको व्यक्तिको कामकारवाही अन्य अधिकारी वा निकायको अधिकारक्षेत्रअन्तर्गत पर्ने प्रकृतिको देखिएमा अख्तियार दुरुपयोग अनुसन्धान आयोगले आवश्यक कारवाहीको लागि सम्बन्धित अधिकारी वा निकायसमक्ष लेखी पठाउन सक्नेछ” भन्ने व्यवस्था गरेको देखिन्छ । उपरोक्त व्यवस्थाबाट आयोगले भ्रष्टाचार गरेकोमा अनुसन्धान तहकीकात गरी मुद्दा चलाउने र अनुचित कार्य गरी अख्तियारको दुरुपयोग गरेको देखिएमा सचेत गराउन, विभागीय कारवाही वा कानूनमा व्यवस्था भएबमोजिम अन्य कारवाही गर्न अख्तियारवालालाई लेखी पठाउन सक्ने गरी मुलतः २ वटा अधिकार प्रदान गरेको देखिन आयो ।

५. आयोगले कारवाही गर्न लेखी पठाउने विषयको सन्दर्भमा आयोगले सजाय किटान गरी लेख्न पाउने हो कि होइन ? कारवाही गर्न पत्र पठाउदा कति हदसम्म लेख्न पाउने हो ?भन्ने विषयनै प्रस्तुत मुद्दाको प्रमुख विषय देखिदा सो सम्बन्धमा भएको कानूनी व्यवस्थालाई समेत अध्ययन गर्नुपर्ने देखियो । अख्तियार दुरुपयोग अनुसन्धान आयोग ऐन, २०४८ को दफा ११(१) मा “आयोगले गरेको अनुसन्धानबाट सार्वजनिक पद धारण गरेको व्यक्तिले अनुचित कार्य गरेको देखिएमा वा विश्वास गर्नुपर्ने मनासिब कारण भएमा आयोगले त्यस्तो व्यक्तिलाई निजउपर परेको उजुरीको अनुसन्धानबाट प्राप्त विवरण उल्लेख गरी सो सम्बन्धमा स्पष्टीकरण पेश गर्न मनासिब म्याद तोकी सूचना दिनुपर्ने र दफा ११ (२) मा उपदफा (१) बमोजिम सूचना दिदा सार्वजनिक पद धारण गरेको व्यक्ति उपर परेको उजुरी र सो सम्बन्धमा भएको अनुसन्धान बाट प्राप्त विवरण र निज उपरको आरोप कुन कुन कुरा र कारणमा आधारित छ र सो आरोप ठहरिएमा के कस्तो विभागीय कारवाही वा सजाय हुने हो, सो समेत खुलाउनु पर्नेछ” भन्ने व्यवस्था गरेको देखिन्छ त्यसैगरी, दफा १२(१) मा “...स्पष्टीकरण पेश नगरेमा वा निजले पेश गरेको स्पष्टीकरण आयोगलाई सन्तोषजनक नलागेमा आयोगले निजलाई सचेत गराउन वा कसूरको मात्रानुसार कारण र आधार खुलाई विभागीय सजाय गर्न अख्तियारवालालाई लेखी पठाउन सक्नेछ ” भन्ने प्रवधान राखेको देखिन्छ । उल्लेख गरिएको प्रावधान मात्र हेर्ने हो

भने, आयोगले उजूर परेको व्यक्तिलाई विभागीय कारवाही वा सजाय गर्न निर्देशन दिदा सजाय किटान गरी विभागीय कारवाही वा सजाय गर्न लेखिपठाउनु पर्ने देखिन्छ । तर उपरोक्त ऐनको दफा १२(२) समेतलाई हेर्दा त्यस्तो व्यवस्था गरेको हो भन्ने देखिन आउदैन । संविधान वा ऐनको कुनै धारा वा दफामा गरिएको व्यवस्थाको अर्थ गर्दा कुनै एक दफा वा धाराको मात्र अर्थ नगरी त्यससँग सम्बन्धित सबै धारा वा दफालाई समग्रमा हेर्नु पर्दछ । त्यसकारण ऐ ऐनको दफा ११(१), ११(२) र १२(१) को व्यवस्थालाई दफा १२(२) सँग मिलाएर हेर्नुपर्ने हुन आउछ । ऐ ऐनको दफा १२(२) मा “उपदफा १ बमोजिम लेखी आएमा सम्बन्धित अख्तियारवालाले उपयुक्त सजाय प्रस्ताव गरी तीन महिनाभित्र प्रचलित कानूनबमोजिम विभागीय कारवाही गरी सोको जानकारी आयोगलाई दिनुपर्नेछ” भन्ने व्यवस्था गरेको देखिँदा कुन सजाय गर्ने भन्ने छनौट गर्ने अधिकार अख्तियारवालालाई दिएको देखिन्छ । उपयुक्त सजाय प्रस्ताव गरी विभागीय कारवाही गर्ने अख्तियारी अख्तियारवालालाई प्रदान गरेको अवस्थामा यदि आयोगले नै सजायको दफा र सजाय नै किटान गरी निर्देशन दिने हो भने उपयुक्त सजाय प्रस्ताव गर्न पाउने अख्तियारवालाको अधिकार समाप्त भै दफा १२(२) को व्यवस्था निष्क्रिय हुन पुग्दछ ।

६. नेपालको अन्तरिम संविधान, २०६३ को धारा १२०(३) ले आयोगले...सचेत गराउन, विभागीय कारवाही वा कानूनमा व्यवस्था भएबमोजिम अन्य आवश्यक कारवाहीको लागि अख्तियारवाला समक्ष लेखी पठाउन सक्नेछ भन्ने मात्र व्यवस्था गरेको र त्यसै गरी अख्तियार दुरुपयोग अनुसन्धान आयोग ऐन २०४८को दफा १२(२)मा “आयोगले अख्तियारवालालाई विभागीय कारवाही वा सजाय गर्न लेखी आएमा सम्बन्धित अख्तियारवालाले उपयुक्त सजाय प्रस्ताव गरी ... विभागीय सजाय गरी सोको जानकारी आयोगलाई दिनु पर्नेछ” भन्ने व्यवस्था लाई अख्तियार दुरुपयोग अनुसन्धान आयोग ऐन २०४८ को दफा ११(२), १२(१) सँग मिलाई हेर्दा आयोगले सजाय किटान नगरी कारवाहीको निर्देशनसम्म गर्न पाउने र अख्तियारवालाले व्यक्तिलाई उसको क्रियाको आधारमा कुन सजाय प्रस्ताव गर्न उपयुक्त हुन्छ सो सजाय प्रस्ताव गरी स्पष्टीकरण सोध्ने र सजाय गर्न पाउने गरी अधिकारको विभाजन गरेको हो भनी अर्थ गर्नु कानूनी र न्यायिक हुन आउँछ । उपरोक्त विवेचनाबाट सजाय चयन गर्न पाउने अधिकार अख्तियारवालालाई मात्र भएको देखिँदा सजायको निर्धारणकर्ता अख्तियारवाला नै हो भन्ने देखिन आउछ ।

७. सार्वजनिक पदमा रहेका व्यक्तिले अनुचित कार्यगरी अख्तियारको दुरुपयोग गरेको वा भ्रष्टाचार गरेको सम्बन्धमा उजूर परेको अवस्थामा, अख्तियार दुरुपयोग अनुसन्धान आयोगले, आफू समक्ष आएको उजुरीमा छानबीन अनुसन्धान तहकीकात गरी सार्वजनिक पदमा आसिन व्यक्तिले अनुचित कार्यगरी अख्तियारको दुरुपयोग गरेको देखेमा विभागीय सजाय गर्न निर्देशन दिने र भ्रष्टाचार भएको देखिएमा भ्रष्टाचारमा मुद्दा चलाउने निर्णय गरी मुद्दा दर्ता गर्नु पर्दछ । आयोग वस्तुतः यिनै प्रयोजनका लागि स्थापित संवैधानिक निकाय हो । नेपालले प्रतिद्वन्दात्मक कानूनी पद्धति (Adversarial Legal System) अवलम्बन गरेको छ । यो पद्धति अवलम्बन गरेको मुलुकमा अभियोजन र अनुसन्धान गर्ने निकाय वा पक्षले मुद्दाको निर्णय गर्न सक्दैन । आयोग मुद्दाको निर्णयकर्ता नभै अनुसन्धान, तहकीकात र अभियोजनकर्ता सम्म हो । त्यसकारण आयोगले कसैउपर विभागीय सजाय गर्न निर्देशन दिदा सजायको निर्णयकर्ताको रूपमा नरही विभागीय सजाय गर्नु भन्नेसम्मको निर्देशन दिनुपर्ने हुन्छ । त्यसरी निर्देशन आएमा अख्तियारवालाले नै आफूलाई प्राप्त विभागीय सजाय गर्न पाउने अधिकार प्रयोग गरी गलतिको आधारमा उपयुक्त सजाय प्रस्ताव गरी

कारवाही गर्नुपर्ने हुन्छ । यदि त्यसो नगरी आयोगले सजाय किटान गरी निर्देशन दिने र अख्तियारवाला त्यसको प्रक्रिया पुन्याई कार्यान्वयन गर्नेसम्मको काम गर्ने निकाय मान्ने हो भने अनुसन्धानकर्ता नै निर्णयकर्ताको रूपमा उभिने र वास्तविक रूपमा विभागीय कारवाही गर्ने पदाधिकारी निर्णय कार्यान्वयनकर्ताको रूपमा सीमित रहन पुग्दछ । संविधान र अख्तियार दुरुपयोग अनुसन्धान आयोग ऐनको धारणा र मर्म यस्तो होइन । नत मान्य कानूनको सिद्धान्तले नै त्यसो गर्न मिल्दछ । अतः नेपालको अन्तरिम संविधान, २०६३ को धारा १२०(३), (४)र(५), अख्तियार दुरुपयोग अनुसन्धान आयोग ऐन, २०४८ को दफा ११(२), दफा १२(१) र १२(२) समेतलाई समग्रमा हेर्दा अख्तियारवालाको अधिकार नै समाप्त हुने र अनुसन्धान तहकीकात र अभियोजन गर्ने निकाय नै निर्णयकर्ता हुन सिद्धान्ततः नमिल्ने भएको कारण कुनै व्यक्तिउपर उजूर परेमा सो व्यक्तिले के कस्तो काम गरी अख्तियारको दुरुपयोग गरेको हो, छानबीन अनुसन्धान गरी, अख्तियारको दुरुपयोग गरेको देखिएमा त्यसलाई पुष्टि गर्ने आधार र कारण खोली विभागीय कारवाही गर्न निर्देशन दिनसम्म पाउने देखिदा, अख्तियार दुरुपयोग अनुसन्धान आयोगले नै सजायसम्बन्धी कानूनको दफा र सजाय किटान गरी सजाय गर्न निर्देशन गर्न पाउछ भन्न मिल्ने देखिएन ।

८. तसर्थ उपरोक्त विवेचित आधार कारण र नेकाप २०६४, नि.नं. ७८०२, पृ. १, रुद्रकुमार श्रेष्ठ वि. अख्तियार दुरुपयोग अनुसन्धान आयोग काठमाडौं समेत भएको उत्प्रेषणको निवेदनमा प्रतिपादित सिद्धान्त समेतको आधारमा अख्तियार दुरुपयोग अनुसन्धान आयोगले सार्वजनिक पद धारण गरेको व्यक्तिले अनुचित कार्य गरी अख्तियारको दुरुपयोग गरेको देखेमा निजउपर सो तथ्यको आधार कारण खोली सम्बन्धित अख्तियारवालालाई विभागीय कारवाही गर्न लेखी पठाउन सक्ने भए पनि अख्तियारवालाले आफ्नो विवेक प्रयोग गरी उपयुक्त सजाय छनोट गरी सजाय र निर्णय गर्न पाउने अधिकार अतिक्रमण गरी दण्ड सजायको दफा समेत किटान गरी निर्देशन दिनसक्ने नदेखिँदा सामान्य रूपबाट विभागीय सजाय गर्न लेखिपठाउनु पर्नेमा आयोगले निवेदकलाई गर्ने सजाय (दफा) किटान गरी कारवाही गर्न दिएको मिति २०६५।१२।२५ को निर्णय, सो निर्णयअनुसार लेखेको जानकारी एवं आवश्यक कार्यार्थ पत्र र सोअनुसार मन्त्रालयले मिति २०६६।६।१ मा सोधेको स्पष्टीकरण समेत कानूनसम्मत देखिएन । अतः अख्तियार दुरुपयोग अनुसन्धान आयोगले सजाय किटान गरी निवेदकलाई निजामती सेवा ऐन, २०४९ को दफा ६०क को देहाय (ग) को कसूरमा ऐ. ऐनको दफा ५९ को (क)(३) अनुसार विभागीय सजाय गर्न वन तथा भू-संरक्षण मन्त्रालयमा लेखी पठाउने भनी गरेको मिति २०६५।१२।२५ को निर्णय, सो निर्णयअनुसार गर्न भनी आयोगले वन तथा भू-संरक्षण मन्त्रालयलाई लेखेको मिति २०६५।१२।२८ को जानकारी एवं आवश्यक कार्यार्थ पत्र, आयोगले सजायको दफा संशोधन गर्न लेखेको पत्र र सो निर्णय र पत्र अनुसार वन तथा भू-संरक्षण मन्त्रालयले निवेदकसँग कारवाही गर्ने क्रममा सफाइ पेश गर्नु भनी मिति २०६६।६।१ मा लेखेको स्पष्टीकरण पत्र समेतका कामकारवाही उत्प्रेषणको आदेशले बदर गरी दिएको छ । दायरीको लगत कट्टा गरी मिसिल नियमानुसार वुझाई दिनु ।

उक्त रायमा म सहमत छु ।

न्या.कृष्णप्रसाद उपाध्याय

इति संवत् २०६७ चैत २३ गते रोज ४ शुभम् .

इजलास अधिकृत: लीलाराज अधिकारी

## भर्खरै प्रकाशित नजिरहरू

- ११११ - सम्बन्ध विच्छेद ([http://nkp.gov.np/full\\_detail/9050](http://nkp.gov.np/full_detail/9050))  
 फैसला मिति : २०७५/०१/२८ | मुद्दा नं : ०६७-CR-०७२६
- १११८ - बन्दीप्रत्यक्षीकरण / परमादेश ([http://nkp.gov.np/full\\_detail/9049](http://nkp.gov.np/full_detail/9049))  
 फैसला मिति : २०७४/०८/२९ | मुद्दा नं : ०७४-WH-००२९
- १११७ - उत्प्रेषण / परमादेश ([http://nkp.gov.np/full\\_detail/9048](http://nkp.gov.np/full_detail/9048))  
 फैसला मिति : २०७५/०३/१४ | मुद्दा नं : ०६९-WO-०२०२
- १११६ - उत्प्रेषण / परमादेश ([http://nkp.gov.np/full\\_detail/9047](http://nkp.gov.np/full_detail/9047))  
 फैसला मिति : २०७४/११/३० | मुद्दा नं : ०६९-CI-१०७१
- १११५ - उत्प्रेषण / परमादेश ([http://nkp.gov.np/full\\_detail/9046](http://nkp.gov.np/full_detail/9046))  
 फैसला मिति : २०७४/०५/१२ | मुद्दा नं : ०६८-wo-०६३३

## धेरै हेरिएका नजिरहरू

- निर्णय नं: # १२७३ - मानाचामल ([http://nkp.gov.np/full\\_detail/8079](http://nkp.gov.np/full_detail/8079))  
 फैसला मिति : २०७१/०५/०५ | मुद्दा नं : ०६८-CI-०२१६
- निर्णय नं: # १३४६ - मानव बेचबिखन, बालविवाह, जबर्जस्ती करणी  
 ([http://nkp.gov.np/full\\_detail/8389](http://nkp.gov.np/full_detail/8389))  
 फैसला मिति : २०७१/१०/१९ | मुद्दा नं : ०६७-CR-१२८८
- निर्णय नं: # १३१७ - हालैदेखिको बक्सपत्र लिखत बदर ([http://nkp.gov.np/full\\_detail/8316](http://nkp.gov.np/full_detail/8316))  
 फैसला मिति : २०७१/०७/१९ | मुद्दा नं : ०६७-CI-०९०३
- निर्णय नं: # १२७४ - लागु औषध (नरफिन) ([http://nkp.gov.np/full\\_detail/8080](http://nkp.gov.np/full_detail/8080))  
 फैसला मिति : २०७१/०५/०५ | मुद्दा नं : २०६७-CR-०९९२
- निर्णय नं: # १३१९ - उत्प्रेषण ([http://nkp.gov.np/full\\_detail/8363](http://nkp.gov.np/full_detail/8363))  
 फैसला मिति : 2070/10/20 | मुद्दा नं : ०६९-WS-००३५