

UNPROTECTED INDIGENOUS WOMEN IN THE PROTECTED AREAS:

**The Violations of Indigenous Women's Rights by the Authorities
of National Parks and Wildlife/Hunting Reserves in Nepal**



National Indigenous Women's Federation (NIWF)

2020

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Chini Maya Majhi

Chairperson

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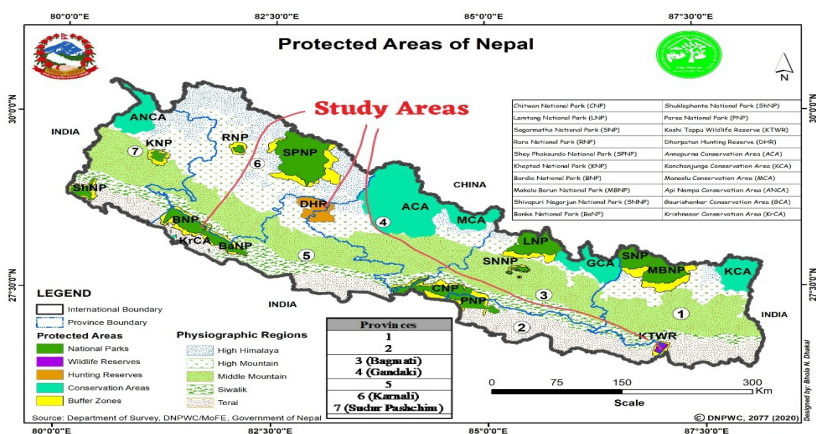
Abbreviations

BNP	Bardiya National Park
BS	Bikram Sambat (Era)
BZ	Buffer Zone
CA	Conservation Area
CBD	Convention on Biological Diversity
CCTV	Close Circuit Television
CEDAW	Convention on Elimination of All Forms of Discrimination against Women
CEDAW	Committee on Elimination of Discrimination against Women
CNP	Chitwan National Park
DNPWC	Department of National Parks and Wildlife Conservation
DPHR	Dhorpatan Hunting Reserve
FGD	Focus Group Discussion
FPIC	Free, Prior and Informed Consent
HR	Hunting Reserve
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IUCN	International Union for Conservation of Nature
IWGIA	International Work Group on Indigenous Affairs
KII	Key Informants Interviews
KTWLR	Koshi Tappu Wildlife Reserve
LAHURNIP	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
MBNP	Makalu Barun National Park

MoFE	Ministry of Forest and Environment
NA	Nepal Army
N-Peace	A United Nations Development Programme (UNDP) flagship initiative
NIWF	National Indigenous Women's Federation
NP	National Park
NTFP	Non-Timber Forest Products
OHCHR	Office of the High Commissioner for Human Rights
PA	Protected Area
UNDP	United Nations Development Program
UNDRIP	United Nations declaration on the Rights of Indigenous Peoples
UNPFII	United Nations Permanent Forum on Indigenous Peoples' Issues
UNRHC	United Nations Resident and Humanitarian Coordinator's Office
USD	US Dollar
WLR	Wildlife Reserve

I. INTRODUCTION AND METHODOLOGY

The Department of National Parks and Wildlife Conservation (DNPWC), which is under the Ministry of Forests and Environment (MoFE) of the Government of Nepal, “was established in 1980 to conserve and manage wildlife and biodiversity of the country. Nepal has established a very good network of Protected Areas system with 12 National Parks (NP), 1 Wildlife Reserve, 1 Hunting Reserve, 6 Conservation Areas, and 13 Buffer Zones extending from lowland Terai to high mountains, covering 23.39% of the total country's land, which contribute to in-situ conservation of ecosystems and biodiversity across the country. Conservation efforts made by the government of Nepal is worldwide popular and highly recognized by the international societies.”¹ The 12 National Parks (NPs) are Banke NP, Bardiya NP, Chitwan NP, Khaptad NP, Langtang NP, Makalu Barun NP, Parsa NP, Rara NP, Sagarmatha NP, Shey-Phoksundo NP, Shivapuri Nagrajun NP, and Shukla Phanta NP. There is only one wildlife reserve, i.e. the Koshi Tappu Wildlife Reserve (KTWLR), and only one hunting reserve, i.e. the Dhorpatan Hunting Reserve (DHR). The six Conservation areas (CAs) are Annapurna CA, Api Nampa CA, Gaurishankar CA, Kanchenjunga CA, Krishnasaar CA, and Manaslu CA (See Map 1).



1 <http://www.dnpwc.gov.np/en/>

Research reports by Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) and National Indigenous Women Federation (NIWF) (2020)², and Bal Bahadur Mukhia (2011)³ showed that army personnel and park officials have been engaged in gross violation of Indigenous Peoples' human rights. So, to optimally use the limited resources, two national parks, one wildlife reserve, and one hunting reserve were selected but due to pre-monsoon rain followed by COVID-19 pandemic and subsequent lockdown, fieldwork in MBNP was dropped.

NIWF and N-Peace Network-UNDP decided to carry out research on the situation of human rights of Indigenous Women in National Parks and Conservation Areas in Nepal. The main objectives of the research are two: (a) to review laws and policies related to National Parks, Wildlife and Hunting Reserves, and (b) to find out the situation of violations of Indigenous Women's rights by selected National Parks, Wildlife and Hunting Reserves.

This study is based primarily on a desk review of the main laws and policies of national parks, wildlife conservation, and hunting reserve, and focus group discussions with Indigenous women in the community who are using its resources.

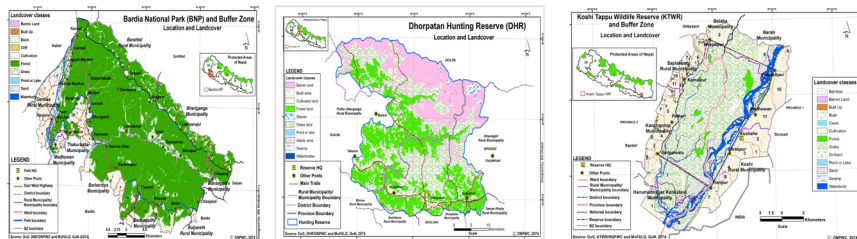
Laws and Policy documents, especially National Park and Wildlife Conservation Act, 2029 and Himalayan National Park Rules, 2036 (1979) are being reviewed. All the national parks, a wildlife reserve, a hunting reserve and conservation areas are implemented in accordance with the National Park and Wildlife Conservation Act,

- 2 Limbu, Shankar, Yogeshwar Rai, Chini Maya Majhi, Dinesh Ghale, Amrita Thebe and Sanjog Lafa Magar 2020. "Fact-Finding Mission Report. Violation of Indigenous Peoples' Human Rights in Chitwan National Park of Nepal". A report submitted by the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) and National Indigenous Women's Federation (NIWF) to an Independent Panel of Experts-WWF Independent Review in February 2020.
- 3 Mukhia, Bal Bahadur 2011. "Review of Legislative and Policy Gaps and Challenges for the Meaningful Participation of Indigenous Peoples in the Management of Chitwan National Parks and Its Buffer Zones". A report submitted by Dr. Bal Bahadur Mukhia to the Office of the High Commissioner for Human Rights (OHCHR)-Nepal, Kathmandu, Nepal in February 2011.



2029 and those which are in high altitude areas, such as the Dhorpatan Hunting Reserve and Annapurna CA, Himalayan National Park Rules, 2036 (1979) is being applied.

Map 2: Maps of the National Park, Hunting Reserve, and Wildlife Reserve studied



Source: Department of National Parks and Wildlife Conservation, Ministry of Forests and Environment, Government of Nepal.

<http://dnppwc.gov.np/en/conservation-area-detail/80/>

<http://dnppwc.gov.np/en/conservation-area-detail/61/>

<http://dnppwc.gov.np/en/conservation-area-detail/62/>

Bardiya National Park (BNP), Koshi Tappu Wildlife Reserve (KTWR), Dhorpatan Hunting Reserve (DPHR), and Makalu Barun National Park (MBNP) were purposively selected (see Map 2). Field work were carried out in Bardiya National Park (henceforth BNP), Koshi Tappu Wildlife Reserve (henceforth KTWR), and Dhorpatan Hunting Reserve (henceforth DPHR) from February to April 2020. Fieldwork in Bardiya and Koshi Tappu were completed in time as scheduled. Four Focus Group Discussion (FGD) in Bardiya and Koshi Tappu each were carried out. The FGD meetings were arranged by the NIWF. Some Key Informants Interviews (KII) with rangers, Assistant Warden, Warden, Army Captain, Ward Chairs, Customary leaders, and local intellectuals were also conducted.

Due to pre-monsoon activity, including rain and bad weather condition, fieldwork in Makalu Barun National Park was Cancelled.

Table 1. Number of FGDs and its participants by national park/wildlife reserve/hunting center

S.N.	Name of the National Park/	Number of Female Participants
1	Bardiya National Park (BNP)	
1.1	Thakurbaba Municipality-9, Bardiya	13
1.2	Shivapur, Thakurbaba Municipality-9, Bardiya	13
1.3	Chittkaiya, Thakurbaba Municipality-8, Bardiya	8
1.4	Bhurigaun, Thakurbaba Municipality-9, Bardiya	11
2	KoshiTappu Wildlife Reserve (KTWLR)	
2.1	Pipara, Kanchanpur Municipality-5, Saptari	27
2.2	Magzine Chauriya, Saptakoshi Municipality-6, Saptari	28
2.3	Wakal, Kanchanpur Municipality-4, Saptari	47
2.4	Wachahi, Saptakoshi Municipality-6	26
3	Dhorpatan Hunting Reserve (DPHR)	
3.1	Community level meeting, Dhorpatan Municipality	28
	Total	201

Source: Field work, 2020.

Awareness building activities, interaction, mobilization of IPs women groups, multi-stakeholder dialogues, and a consultation meeting was conducted on 17th March 2020 at DPHR. The interaction program was chaired by Ms. Chini Maya Majhi (Chairperson of NIWF). Ms. Karmati Gharti Pun Magar (Deputy Mayor of Dhorpatan Municipality) was a special guest where Mr. Keserjung Budathoki (Major of the Nepal Army), Mr. Hari Bahadur Gharti Magar (Chairperson of Ward no. 9 of the Dhorpatan Municipality), Mr. Dependra Pokharel (Ranger of the DPHR) were the guests of the interaction program. Of the total 62 participants, males were 41 and females were 21. The interaction program was conducted by



Ms. Chini Maya Kala Magar (Chairperson of the Baglung NIWF-District Coordination Committee). Ms. Kamala Thapa (Executive Director, NIWF) has shared the objective of the program and the interaction program was moderated by Dr. Krishna B. Bhattachan (Research Team Leader). Dr. Bhattachan asked questions to all the participants about access to natural resources and challenges faced by the Indigenous Women and Girls after the establishment of the Hunting Reserve and also the army camp, despite of their opposition.

NIWF planned to carry out fieldwork in Makalu Barun National Park after returning from fieldwork in DPHR, but it was canceled due to the COVID-19 pandemic and subsequent lock down imposed by the government. Zoom meeting was not possible due to lack of Wi-Fi in target areas.

The research findings were shared with the concerned stakeholders of KTWLR at Kanchanpur in Saptari at the end of September and of BNP at Thakurdwar in Baridya at the beginning of October. This report has been finalized by including suggestions provided by the participants.

II. REVIEW OF BILLS AND POLICIES RELATED TO NATIONAL PARKS AND WILDLIFE/HUNTING RESERVES

In this section, the *Private Forest Nationalization Act*, Forest Act are reviewed briefly followed by a detail review of the National Park and Wildlife Conservation Act and the Himalayan National Park Rules as all national parks and conservation areas are fully dependent on these two laws. Regulations on National Parks, Wildlife and Hunting Reserves, Buffer Zone, and Conservation Areas are reviewed briefly. Finally, WWF Statement of Principles⁴ Indigenous Peoples and Conservation are also reviewed.

Nepal is ratified many international conventions or covenants, including ILO Convention No. 169, International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on Elimination of All Forms of Racial Discrimination (ICERD), Convention on Biological Diversity (CBD), and adopted declarations, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Law Professor Dr. Bal Bahadur Mukhia had reviewed Legislative and Policy Gaps and Challenges for the Meaningful Participation of Indigenous Peoples in the Management of Chitwan National Parks and Its Buffer Zones back in 2011 for the Office of the High Commissioner for Human Rights (OHCHR)-Nepal.⁵ Mukhia writes, "The declaration of Parks and reserves has legally restrained indigenous peoples from using their traditional rights to these resources. Those people living outside the boundaries have no legal resource to procure compensation for their lost benefits."⁶ His findings were that "Establishment of National

4 WWF International 2008. Indigenous Peoples and Conservation: WWF Statement of Principles. Gland, Switzerland: WWF. https://wwfeu.awsassets.panda.org/downloads/183113_wwf_policyrpt_en_f_2_1.pdf
International. https://wwfeu.awsassets.panda.org/downloads/183113_wwf_policyrpt_en_f_2_1.pdf

5 Mukhia op. cit.

6 Ibid., p. 8.



Parks, wildlife reserves and protected areas resulted in (i) deprivation of sources of subsistence for indigenous peoples depending on forest resources, (ii) end of an extensive form of animal husbandry based on sylvan pastoralism as a major source of income, (iii) displacement from land, (iv) increased human injury, livestock depredation and crops loss, (v) abrogation of usufruct right of traditional forest users, (vi) illegal harvesting of forest resources and poaching, and above all, (vii) degradation in socio-economic condition and traditional lifestyle."⁷

Review of the Private Forest Nationalization Act, 1956

In its Field Bulletin, the Resident and Humanitarian Coordinator's Office writes, "... the Private Forest Nationalization Act 1957 [1956] included all forest land that had previously been used under customary systems of rights and usage under the category of 'government ownership'. There was no compensation for highly marginalized indigenous groups such as the Chepangs who had traditionally managed and used these forests."⁸

Review of the Forest Act, 2049⁹

Concerning Protected Forest, according to Articles 23 on Provisions Relating to the Protected Forest of the Forest Act, 2049 (1993)¹⁰, "If His Majesty's Government considers that any part of a National Forest is of special environmental, scientific or cultural importance or of any other special importance, it may declare such part of the National Forest as a Protected Forest" and "After the declaration of any part of a National Forest as a Protected Forest by His Majesty's Government pursuant to sub-section (1), it shall have to publish a notification in the Nepal Gazette". Further, according to article 24

⁷ Ibid., p.13.

⁸ UN RCHCO 2012. FIELD BULLETIN Chepangs' Struggle for Survival: Views from Makwanpur and Chitwan Districts. Kathmandu: United Nations Resident and Humanitarian Coordinator's Office (UN RCHCO). p. 3. https://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_1021.pdf . See page 3.

⁹ Government of Nepal. 1003. Forest Act, 2049 (1993). <http://extwprlegs1.fao.org/docs/pdf/nep4527.pdf>

¹⁰ Ibid.

about the Forest Management Plan within the Protected Forest,

1. "The Department shall prepare a Work Plan as prescribed for the management of functions relating to the Forest to be undertaken in a Protected Forest, and submit it to the Ministry for approval.
2. The Ministry may send back the Work Plan to the Department if it is deemed necessary to make any alterations in the Work Plan submitted pursuant to subsection (1) and the Ministry shall approve such Work Plan after it is received from the Department with necessary alterations.
3. The District Forest Officer shall implement the Work Plan approved pursuant to subsection (2).
4. The District Forest Officer shall have the power to issue a license as prescribed for the implementation of the Work Plan approved pursuant to subsection (2) and to issue notices of any types to be required for the effective implementation of such Work Plan."

Indigenous Peoples, including Tharu, Chepang, Bote, Raji, Magar, Bhote, and Thakali have never ever given their ancestral lands, territories, and resources to the government. However, "... the Private Forest Nationalization Act 1957 [1956] included all forest land that had previously been used under customary systems of rights and usage under the category of 'government ownership'" (UNRHC Office 2012:3). National Parks and protected areas are indeed its offshoots and it has proliferated in a number of national parks and conservation areas in due course of time. The Department of National Parks and Wildlife Conservation (DNPWC)(2017 (2073 BS)) in its publication of a collection of acts, rules, policy, working policy, working procedure, and guidelines include one Acts, 12 rules, 7 policies and working policies, 4 guidelines, 1 standard, 7 Working Procedures, 1 strategy and 5 miscellaneous. The core law of the National Parks, Wildlife Reserve, Hunting Reserve is National Park and Wildlife Conservation Act, 2029. However, in the case of the National Parks and Hunting Reserve located in the Himalayan



region, according to an official of the DPHR, is Himalayan National Park Regulation, 2036. The Bardiya National Park Regulation, 2053 is also a core document of the BNP.

Review of the National Park and Wildlife Conservation Act, 2029¹¹

The National Park and Wildlife Conservation Act, 2029 (1973 AD) (1st amendment on 6 October 1974; 2nd amendment on 23 December 1982; 3rd amendment on 27 August 1989; 4th amendment on 9 June 1993; and 5th amendment on 30 March 2017)¹² is the main law that governs all national parks and wildlife conservation in Nepal. This act has been in force since 11 March 1973 and by now it has been amended 5 times. The main problem with this Act is that it was formulated during the autocratic party less Panchayat rule whose only mission was a "Unified" Nepal with a slogan of "one King, one nation; one language, one dress" implying genocide, the cultural genocide of Indigenous Peoples. This Act is quite comprehensive as stated in its preamble: (a) management of national parks, (b) conservation of wildlife and their habitat, (c) regulation of hunting, and (d) conservation, promotion, development, and appropriate arrangements for and the use of places which are of special importance from the point of view of natural beauty, and (e) maintaining good manners and welfare of the general public. Clearly, this Act has direct effects on the collective life of most of the 59 Indigenous Peoples of Nepal and is clearly against the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) that was adopted by Nepal in 2007, and ILO Convention No. 169 that Nepal ratified in 2007. More specifically, National Park and Wildlife Conservation Act, 2029 violates Indigenous Peoples' human rights in the following ways:

11 Government of Nepal. 1973. Rastriya Nikunja tatha Banyajantu Samrachyan Ain, 2029 ("National Park and Wildlife Conservation Act, 2029"). Kathmandu: National Law Commission.

<http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/national-parks-and-wildlife-conservation-act-2029-1973>

12 Ibid.

No consultation and participation of Indigenous Peoples, including Indigenous Women, in making of the Act

Indigenous Peoples and Indigenous Women were neither consulted nor allowed to participate in the making of the Act, including its subsequent 5 amendments, and in implementation and management of the National Parks and Conservation Areas.

No FPIC obtained by the government

The government never obtained free, prior and informed consent of Indigenous Peoples on the Act and its subsequent amendments and implementation, including the declaration of the national parks, reserves, conservation areas, and buffer zones. Article 3(1) states, “Government of Nepal may if it deems necessary, declare an area as a national park or reserve or conservation area by publishing a notice in the Nepal Gazette and indicating the boundary thereof” and Article 3(a) states, “Government of Nepal may declare any peripheral area of a national park or reserve as a buffer zone by publishing notification in the Nepal Gazette and indicating the boundaries thereof”. Hence, the Act is highly problematic in terms of the unilateral declarations of Indigenous Peoples’ lands, territories, and resources as national parks or reserves or conservation areas, or buffer zones. There is no requirement of consultation leading to obtaining FPIC before such declaration. Hence, such provisions clearly violate Indigenous Peoples’ rights ensured by the UNDRIP. Indigenous Women and Men had never given their consent to declare any national park or wildlife reserve or hunting reserve or conservation area or buffer zone, which the concerned Indigenous Peoples (Indigenous Women and Men) are protesting. Indigenous Peoples showed their strong protest against unilateral decisions of the government during an interaction at the DPHR.

Welfare, not the Rights-based

In the preamble, it is clear that the Act is based on the principle of “welfare”, not “rights-based”, and the mention of the general public



imply that the Act does not recognize Indigenous Peoples, including Indigenous Women. The blanket term “public” treats Indigenous Peoples like any other non-indigenous peoples.

All definitions of the key concepts relating to national parks and conservation bluntly exclude Indigenous Peoples

According to Article 2a of the Act,

1. “‘National Park’ means an area set aside for the conservation, management, and utilization of flora, fauna, and scenery along with the natural environment”,
2. “‘Strict Nature Reserve’ means an area of ecological importance or important otherwise and set aside for scientific studies”,
3. “‘Wildlife Reserve’ means an area set aside for the conservation and management of wildlife resources and their habitats,’
4. “‘Hunting Reserve’ means an area set aside for the management of wildlife for allowing hunters to hunt them,”
5. “‘Reserve’ means... Strict nature reserve, wildlife reserve and hunting reserve,”
6. “‘Conservation Area’ means an area to be managed according to an integrated plan for the conservation of natural environment and balanced utilization of natural resources”, and
7. “‘Buffer Zone’ means a peripheral area of a national park or reserve prescribed under the Section 3a in order to provide facilities to use forest resources on a regular and beneficial basis for the local people”.

In all these definitions, the focus is on conservation, management, and utilization of natural resources but there is no focus on Indigenous Peoples who have been its custodians from time immemorial. Further, the use of the term local people in the definition of “buffer zone” “local people” includes not only indigenous peoples but

also non-Indigenous Peoples. Treating Indigenous Peoples as local peoples is nothing but denial of their recognition and their rights as Indigenous peoples.

Criminalization of customary practices

There are some provisions in the Act that criminalize Indigenous Women's customary practices. For example, Article 4 states, "No person shall be allowed to enter into a national park or reserve without obtaining an entry permit as prescribed or a written permission from the authorized official" but an exception is given "to persons who have the privilege of right-of-way into the national park or reserve." Article 5 states that no person shall carry out the ten specified actions within a national park or reserve without obtaining written permission from the authorized official. These actions include to "graze any domestic animal or bird, or feed water to it", to "cut, clear, fell, remove or block trees, plants, bushes or any other forest resources, or do anything to cause any forest resources dry, or set it on fire, or otherwise harm or damage it", and to "cause damage to forest resources or wildlife or birds or any land." Such prohibitions are fine if these apply to non-Indigenous Peoples, but it violates the collective rights of Indigenous Women and Men as they are the custodians of such resources and have their spiritual, religious, social, and cultural practices handed down from generation to generation. In fact, these two Articles 4 and 5 criminalize Indigenous Peoples, especially Indigenous Women's customary practices which they have been doing from generation to generation.

Weaken customary self-government systems of Indigenous Peoples

Customary self-government systems, such as *Barghar/Bhalmansa/Matwa/Jebar* of Tharu, *Bheja* of Magar, *Ghampa* ("Mukhiya") of Thakali, Marphali Thakali, Tingaunle Thakali, Tnagbe, and Baragunle, *Majhiorang* of Santhal and Dhimal, and *Bada* of Rang (Byansi/Sauka) have been weakened as their customary roles and responsibilities have been taken away by the government, including



national parks and protected areas. The following provisions of the Act are its examples,

1. Article 16a states, "Forest products and other services could be provided: The prescribed officer may provide prescribed forest products or other services by collecting prescribed fees inside a national park or reserve."
2. Article 16c is about the formation of the Users committee: (1) "The warden, in coordination with local authorities, may form a user's committee for the management of fallen trees, dry wood, firewood and grass in a national park, reserve, conservation area or buffer zone."
3. Article 23 gives the power to inspect and search to officers of the national park: "The prescribed officer may, after securing a warrant from the prescribed officer, enter into and search the house, compound, land or all types of vehicles belonging to a person at any time or to arrest him\her if there is a reasonable ground to believe that the person has done any act in contravention of this Act, and it becomes necessary to collect the evidence or proof of such action. Provided that, there is a possibility that it may take some time to obtain a warrant to enter into and search any house, compound, land or vehicle and that the offender is likely to abscond or suppress evidence of his\her offense during the time, the prescribed officer may enter into and search such house, compound, land or vehicle at any time after duly preparing written records of such matters." Further, Article 24(1) power to arrest without warrant is given to them: "In case there are reasonable grounds to believe that the offender under this Act is likely to escape, the authorized officer may arrest him\her without a warrant. The arrested person shall be produced before the adjudicating authority for legal action within 24 hours excluding the time required for [the] journey."

Deployment of Nepal Army not wanted by Indigenous Peoples

In the Act, there is no mention of deployment of the Nepal Army in National Parks and Conservation Areas (See Table 2), but it has been done through cabinet decisions. The presence of the army in ancestral lands of Indigenous Peoples is not in line with UNDRIP, especially its Article 30 (2) that ensures, "States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities."

The current deployment of the Nepali Army in the conservation of nature is in 13 locations (Table 2).

Table 2. Deployment of Nepal Army in National Parks and Conservation Areas

S.No.	Name of Protected Area	Location	NA Units/sub-units in 2010
1	Kosi Tappu Wildlife Reserve	Kushaha	Indradal Company
2	Sagarmatha National Park	Namche	Shreedal Company
3	Chitwan National Park	Kasara	Gorakh Bahadur Battalion
4	Parsa Wildlife Reserve	Adhabhar	Guru Gorakh Company
5	Chitwan National Park, Western Sector.	Nawalaparasi	Sangram Shardul
6	Lamtang National Park	Dhunche	Indrabox Battalion
7	Rara National Park	Mugu	Samarjit Company
8	She-Phoksundo National Park	Dolpa	Samarsur Company
9	Bardiya National Park	Bardiya	Jwaladal Battalion



10	Khaptad National Park	Bajura	Shamsher Company
11	Suklaphata Wildlife Reserve	Kanchanpur	Chandi Prasad Battalion
12	Shivapuri Nagarjun National Park	Nagarjun	Bhairabi Prasad Company
13	Shivapuri Nagarjun National Park	Shivapuri	Kali Bahadur Company

Source: Nepal Army

<https://www.nepalarmy.mil.np/page/bpd>

<https://www.facebook.com/notes/nepal-army/nepal-army-in-nature-conservation/570055593020706/>

Note: Though it is not mentioned on the website, Nepal Army is deployed also in DPHR.

The cabinet has given five main responsibilities to the Nepali Army in the conservation of nature. These are: (1) Protection duties for Nature Conservation: (a) Patrolling inside National Park and Wild Life Reserves, (b) Controlling encroachment and illegal poaching and deforestation, and (2) Support in Nature Conservation Research Works: (a) Providing manpower in counting wildlife census, (b) Providing necessary information regarding nature conservation, and (c) Supporting rehabilitation of wild species; (3) Social Services "with the aim of winning the hearts and minds of the people and to generate their awareness towards nature conservation": (a) Massive afforestation, (b) Repair and renovation of schools, shrines, assist health centers in buffer zones and within National Parks and Wild Life Reserves, (b) Medical care, (c) Water supply, and (d) Support in construction of bridges, short stretched roads; (4) Disaster Management and (5) Human Resources Development with focus on "preparation and provision of trained manpower for the Nature Conservation education, training in Buffer Zones, National Parks

and Wildlife Reserves".¹³ Nepal Army was deployed in spite of huge public protest by both Indigenous and non-Indigenous Peoples in Dhorpatan.

In brief, the Act in review is not in line with the UNDRIP and ILO Convention No. 169. During field work at the Koshi Tappu Wildlife Reserve, the Warden said to the Researcher, "How can we manage the Reserve by using an outdated law that was designed in 1974. There is a need for a new law that is compatible with the present needs and aspirations."

Review of the Himalayan National Park Rules, 2036 (1979)¹⁴

According to an official of the DPHR, The DPHR and adjacent Annapurna Conservation Areas, and other national parks and conservation areas that are in the high altitude region, are run in accordance to the National Park and Wildlife Conservation Act of 1974, but as the Act does not address some issues specific to the high altitude region, the Himalayan National Park Rules has been implemented since 1979 to supplement and complement it. All the comments on and criticism of the Act are equally true with this Rule as well. According to Article 3 of the Rules, "The boundaries of the National Park shall be as declared by the Government of Nepal by publishing a notice in Nepal Gazette." Hence, the declarations of the boundaries of the DPHR and the Makalu Barun National Park were unilateral decisions of the government.

There are number of articles that restrict entry of Indigenous and non-Indigenous Peoples in Himalayan National Parks.

1. According to Article 4 of the Rules, "The person desiring to enter into the park shall obtain (receive) an admission card as pursuant

13 Nepal Army. Beyond Primary Duties. Nature Conservation. <https://www.nepalarmy.mil.np/page/bpd> Nepali Army | (नेपाली सेना) (nepalarmy.mil.np)

14 Government of Nepal 1973. Himalayan National Park Rules, 2036 (1979). Kathmandu: Nepal Law Commission. <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/rules-and-regulations/himalayan-national-park-rules-2036-1979>



to Schedule - 1 from the warden and to obtain the admission card, the fee as prescribed in Schedule - 2 shall be charged.” In Schedule 2, it is stated that entry is free to Nepali citizens; the Fishing Fee (only with hook, per person per day) is Nep. Rs. 200 and Rs. 100 for the local Bote, Darai, Kumal, Majhi, Tharu, and other similar ethnic people [Indigenous Peoples] traditionally fishing for livelihood.

2. According to Article 5, "Entry may be prohibited: The warden may restrict the entry of any person within the park for the benefit of the park. Provided that, such restriction, shall not be considered that restrict. It has on the travel of the local people and the person of the village where can only be reached through the park or has restricted to travel through the prescribed road as pursuant to Rule, 18."Also, according to Article 6, "Entry into the park to be one's own liability: If any type of harm, damage or injury or even the death has been occurred to the person who has entered into the park whether obtaining an admission card or not, the Government of Nepal shall not be liable for the compensation of such harm, damage, injury or death." Prohibition to enter their ancestral land is also a violation of their rights.
3. Article 7 is about prohibited activities within the park. It states, "No person without obtaining (taking) a written permission of the warden shall be allowed to perform the following activities within the park ;– (A) To build or possess any type of house, huts, residence or other structures. (B) To occupy (capture) any land, to clear or destroy (damage), palnts[] to cultivate, to farm or to grow or harvest any crops, (C) To graze (pasture) domestic animals or birds and to feed water to them in the river or ponds, (D) To cut, fell down, remove, obstruct or trim the trees, plants, bushes or any other plants or to perform any activity for drying out such plants or to set fire on such plants or to harm or cause damage in any form, (E) To halt (stay) for a night or to camp or to set fire in any places. (F) To excavate stones, sand or mines or to remove any minerals, earth or other similar materials or to damage the land in

any form, (G) To stop (block) or divert the rivers, springs or any resources of water which has been flowing within the park or to use the harmful or explosive substances in them, (H) To bring or leave exotic (grown up in foreign environment) plants, animals or birds within the park." Further, Article 8 prohibits goods to be possessed, carried or used. It states, "No person without a written permission of the warden shall be allowed to carry, keep or use the following goods with him/her while entering into the park or staying in the park, or passing (travelling) through the road prescribed pursuant to Rule 18:– (A) A Bow, a Spear (Spike) a Trap (Darjan), A snare (knotted trapping rope - Paso), a trapping net (Jaal), an obstacles (Dharap), a catapult or any weapons (arms) which may cause wound or fires the bullets, ammunitions, poison, explosives or any devices using those explosives, (B) Trophy or dried or fresh meat (flesh) of any wildlife. Provided that, it shall not restrict (obstruct) to carry a knife (Khukuri), an Axe (Bancharo) and similar weapons through the Park by the local persons or persons of the village where can only be reached through the Park for their won domestic purpose (activities).” These provisions criminalize Indigenous Peoples' customary knowledge, technology, skills, and practices and these go against the provisions of ILO Convention No. 169 and the UNDRIP.

4. According to Article 10, "Prohibition on hunting the wildlife or birds and destroying the eggs, nests or hives of birds or insects : Except in condition of obtaining a permission as pursuant to the Act, no person without the written permission of the warden shall be allowed to hunt chase or frighten any wildlife or birds or to kill, catch or injure any wildlife, birds or insects or to remove, destroy or disturb the eggs, nests or hives of any birds or insects or to collect any insects, fishes or natural products, in other situations."
5. According to Article 11, "No fishing to be allowed without taking a permission: (1) No person shall be allowed for fishing in the river (springs) or ponds situated within the park without taking (receiving) a permit in the format as prescribed in Schedule – 3

from the warden and by paying the fees that has to be charged as prescribed in Schedule – 2. (2) The person desiring to fishing by obtaining a permit as pursuant to these Rules shall not use any other instrument except than the hook while fishing. (3) Notwithstanding anything contained in Sub-rule (1) and (2), No fishing shall be allowed since 1st date of Chaitra to the end (Masant) of the Ashwin [September/October].” Further, Article 12 states, “Prior approval of the Government of Nepal to be taken (obtained): (1) Any person desiring to perform any research or functions within the park shall be allowed to perform such functions by obtaining (taking) prior approval of the Government of Nepal. One copy of the research done by taking such approval shall be submitted before the Government of Nepal.”

Both the laws target Indigenous Peoples, and Indigenous Women, who frequently go to forests to make their livelihoods. What is highly problematic about these legal provisions, in particular, and the law, in general, is that the government never obtained FPIC from the concerned Indigenous Peoples, who are the rights holders. Further, such laws and legal provisions are not in line with the UNDRIP; hence, it violates Indigenous Women's rights to their lands, territories, and resources. The customary means of livelihood of the Indigenous Peoples recognized by the law are fishing and collecting wild foods and vegetables because they are the custodians of rivers and wetlands, and they have been continuing such customary practice from generation to generation since time immemorial. Imposing a requirement of entry fee and licensing to these Indigenous Peoples are violations of their rights. Indigenous Peoples living in these protected areas are poor as their lands and resources, that is their traditional means of livelihood, have been taken away by the government, many of them are unable to pay such entry fees and getting admission card to carry out their customary occupation is an irony. Hence, Indigenous Women's rights enshrined in the UNDRIP and ILO Convention No. 169 were violated by the State and abused by the private business companies. They do

not enjoy the full range of human rights when the collective rights in the National Parks and Wild Life Reserves. Their capacity to exercise the fundamental social, economic, cultural, and political rights guaranteed in international instruments were restricted by the National Parks, Hunting Reserve, and Wild Life Reserves. Further, they do not enjoy the right to self-determination in their own ancestral lands. They do have their continuing indigenous cultures, traditions, spiritual practices, economies, and political systems but the policies of the State, including their policy on National Parks, Hunting Reserve, and Wild Life Reserves have detrimental effects on all of these systems.

Review of Regulations on National Parks, Wildlife and Hunting Reserves, Buffer Zone and Conservation Areas

There are many, at least 15 regulations that have been enforced since the implementation of the National Park and Wildlife Conservation Act, 2029 in 1974 that apply to various national parks,¹⁵ and conservation areas. These are:

1. *Rastriya Nikunja tatha Banyajantu Samrakshan Niayamabali, 2030* ("Protection of National Parks and Wildlife Regulation"),
2. *Banyajantu Arakchya Niyamabali, 2034* ("Wildlife Reserve Regulation"),
3. *Chitwan Rastriya Nikunja Niayamabali, 2030* ("Chitwan National Park Regulation"),
4. *Bhu tatha Jaladhar Niyamabali, 2042* ("Land and Watershed Regulation"),

15 Department of National Parks and Wildlife Conservation 2073 (2016 A.D.). Nepalma Samrakshit Chhetra Byabasthapan ra Banyajantu Samrakshyan Sambandhi Nitigat tatha Kanuni Byabasthaharu. (Ain, Niyam, Niti, Karyaniti, Karyaprakriya ra Nirdesikaharuko Sangalo ("Policy and Legal Provisions relating to Management of Protected Areas and Wildlife Conservation in Nepal"). Kathmandu: Department of National Parks and Wildlife Conservation, Ministry of Forest and Soil Conservation, Government of Nepal.

http://www.dnpwc.gov.np/media/rules/Law_book_collection_2073_1.pdf



5. *Khaptad Rastriya Nikunja Niayamabali, 2044* ("Khaptad National Park Regulation"),
6. *Ban Niyamabali, 2051*
7. *Madhyabarti Chhetra Byabasthapan Niyamabali, 2052* ("Buffer Zone Regulation"),
8. *Bardiya Rastriya Nikunja Niayamabali, 2053* ("Bardiya National Park Regulation"),
9. *Samrakshan Chhetra Byabasthapan Niayamabali, 2053* ("Conservation Areas Management Regulation"),
10. *Batabaran Samrakshan Niyamabali, 2054* ("Protection of Environment Regulation")
11. *Samrakshan Chhetra Sarkari Byabasthapan Niyamabali, 2057* ("Conservation Area Government Management Regulation"),
12. *Kanchanjuangha Samrakshan Chhetra Byabasthapan Niyamabali, 2064* ("Kanchanjhang Conservation Area Regulation"),
13. *Ozone Tahalai Nasta Garne Padarthako Upabhog Niyamabali, 2064* ("Consumption of Materials Damaging Ozone Layers Regulation"),
14. *Banke Rastriya Nikunja Niayamabali, 2071* ("Banke National Park Regulation"), and
15. *Rastrapati Chure-Tarai Madhes Samrakshan Bikas Samiti (Gathan) Adesh, 2071* (President Chure-Tarai Madhes Conservation Development Committee (Establishment) Ordinance").

The main provisions of all National Park Regulation, including "Bardiya National Park Regulation" are identical because these are fully based on the National Park and Wildlife Conservation Act

implemented in 1973. The government never consulted and obtained FPIC from Indigenous Peoples, and Indigenous Women while formulating and implementing these regulations, and these all are not in line with the UNDRIP and ILO Convention No. 169. These all Regulations like the Act violates rights, including collective ownership, control, use and management of lands and resources, meaningful participation, customary laws, and institutions, free, prior and informed consent, indigenous knowledge, etc., of Indigenous Peoples and Indigenous women.

Buffer zones in the Baridya National Parks and Koshi Tappu Conservation Center were established by the government in coordination with the local government following the *Madhyabarti Chhetra Byabasthapan Niyamabali, 2052*. The government is planning to establish a buffer zone in the DPHR as well. This Regulation does not recognize Indigenous Peoples; instead, it mentions of community and local people assuming that it included Indigenous Peoples as well. This regulation allows, "local peoples" or "community" to establish a buffer zone to conserve wildlife, natural environment, and natural resources, biodiversity, forest, and development works (Article 7). The Buffer zone user's committee comprises of a Chairperson, Vice-Chairperson, secretary, treasurer, and at least five members selected by the users themselves for five years (Article 8). They should prepare their work plan and get approval of the government for its implementation (Article 13). These user's groups may be transformed into *Madhyabarti Samudayik Ban* (Buffer Zone Community Forest) (Article 21).

During FGDs, KIIs and community level interaction conducted in BNP, KTWLR, DHG. Indigenous Women's rights enshrined in the UNDRIP and ILO Convention No. 169 were violated by the State and abused by the private business companies. They do not enjoy the full range of human rights when the collective rights in the National Parks and Wild Life Reserves. Their capacity to exercise the fundamental social, economic, cultural, and political rights guaranteed in international instruments were restricted by the



National Parks, Hunting Reserve, and Wild Life Reserves. Further, they do not enjoy the right to self-determination in their own ancestral lands. They do have their continuing indigenous cultures, traditions, spiritual practices, economies, and political systems but the policies of the State, including their policy on National Parks, Hunting Reserve, and Wild Life Reserves have detrimental effects on all of these systems.

Review of WWF Statement of Principles¹⁶ Indigenous Peoples and Conservation

Since 2000, WWF Nepal's supports the government for the conservation of two priority landscapes, viz. Terai Arc Landscape (TAL) and Sacred Himalayan Landscape (SHL) and also to two other landscapes, viz. Sacred Himalayan Landscape (SHL) and Chitwan Annapurna Landscape (CHAL). Under TAL, four Protected Areas and Buffer Zones, namely, Bardia National Park and Buffer Zone, Chitwan Bardia National Park and Buffer Zone, Parsa Wildlife Reserve and Buffer Zone, and Suklapanta Wildlife Reserve and Buffer Zone, and four Corridors and Bottlenecks, namely, Kangchenjungha Conservation Area, Langtang National Park, and Buffer Zone, Koshi River Basin and Indrawati Sub-basin.¹⁷ WWF has been applying Indigenous Peoples and Conservation: WWF Statement of Principles since 2008. This policy is applicable in the conservation of all four landscapes. WWF has highlighted that the Principles for partnership between WWF and indigenous peoples' organizations in conserving biodiversity within indigenous peoples' lands and territories, and in promoting sustainable use of natural resources. As WWF is committed to the UNDRIP and ILO Convention No. 169 (See Box 3), it is their obligation to make their work done in partnership with the Nepal government relating to National Parks and Conservation Areas in Nepal fully compatible with these two international standards of human rights of Indigenous Peoples.

16 WWF International 2008. Indigenous Peoples and Conservation: WWF Statement of Principles. Gland, Switzerland: WWF.https://www.feu.awsassets.panda.org/downloads/183113_wwf_policyrpt_en_f_2_1.pdf

17 Please refer to https://www.wwfnepal.org/about_wwf/where_we_work/

Box 1. Concerning Indigenous Peoples and Conservation, WWF Statement of Principles about "Rights and Interests of Indigenous Peoples"

"4. WWF acknowledges that, without recognition of the rights of indigenous peoples, no constructive agreements can be drawn up between conservation organizations and indigenous peoples and their representative organisations.

5. Since indigenous peoples are often discriminated against and politically marginalized, WWF is committed to making special efforts to respect, protect, and comply with their collective and individual rights, including customary as well as resource rights, in the context of conservation initiatives. This includes, but is not limited to, those set out in national and international law, and in other international instruments.

In particular, WWF fully endorses the provisions about indigenous peoples contained in the following international instruments:

- 1. Agenda 21*
- 2. Convention on Biological Diversity*
- 3. ILO Convention 169 (Convention Concerning Indigenous and Tribal Peoples in Independent Countries)²*
- 4. UN Declaration on the Rights of Indigenous Peoples³*
- 5. WWF appreciates the enormous contributions indigenous peoples have made to the maintenance of many of the earth's most fragile ecosystems. It recognizes the importance of indigenous resource rights and knowledge for the conservation of these areas.*
- 6. WWF recognizes indigenous peoples as rightful architects of and partners for conservation and development strategies that affect their territories.*
- 7. WWF recognizes that indigenous peoples have the rights to the lands, territories, and resources that they have traditionally owned or otherwise occupied or used and that those rights must be recognized and effectively protected, as laid out in the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples.*
- 8. WWF recognizes the right of indigenous peoples to exert control over their lands, territories, and resources, and establishes on them the management and governance systems that best suit their cultures and social needs, whilst respecting national sovereignty and conforming to national conservation and development objectives.*
- 9. Consistent with Article 7 of the ILO Convention 169, WWF recognizes indigenous peoples' right to decide on issues such as technologies and management systems to be used on their lands and supports their application insofar as they are environmentally sustainable and contribute to the conservation of nature.*



10. *In conformity with the provisions of the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, WWF recognizes the right of indigenous peoples not to be removed from the territories they occupy. Where their relocation is considered necessary as an exceptional measure, it shall take place only with their free, prior informed consent, and in full respect of national and international laws and conventions which guarantee the rights of indigenous peoples.*
11. *WWF recognizes that indigenous peoples have the right to determine priorities and strategies for the development or use of their lands, territories, and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting those lands, territories, and resources.*
12. *WWF recognizes and supports the rights of indigenous peoples to improve the quality of their lives, and to benefit directly and equitably from the conservation and sustainable use of natural resources within their territories.*
13. *In instances where multiple local groups claim rights to resources in indigenous territories, WWF recognizes the primary rights of indigenous peoples based on historical claims and long-term presence, with due regard for the rights and welfare of other legitimate stakeholders.*
14. *WWF respects the rights of indigenous peoples to enjoy an equitable share in any economic or other benefits realized from their intellectual property and traditional knowledge, building on the provisions of the Convention on Biological Diversity.*
15. *In conformity with the provisions of the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, WWF recognizes the right of indigenous peoples not to be removed from the territories they occupy. Where their relocation is considered necessary as an exceptional measure, it shall take place only with their free, prior informed consent, and in full respect of national and international laws and conventions which guarantee the rights of indigenous peoples.*
16. *In accordance with IUCN RESWCC3 .056, WWF recognizes the right of indigenous peoples living in voluntary isolation and/or initial contact to their lives, lands, and territories, and to freely decide to remain in isolation, maintain their cultural values, and freely decide if, when and how they wish to contact and/or integrate with the outside world."*

Source: WWF International. op. cit. pp. 2-3.



Furthermore, WWF states that it will be governed by these three principles: (i) WWF conservation activities within indigenous peoples' lands and territories; (ii) WWF partnerships with indigenous peoples' organizations; and (iii) WWF partnerships with other organizations whose activities may impact upon indigenous peoples. WWF states,

"27. WWF will not promote or support, and may actively oppose, interventions which have not received the prior free and informed consent of affected indigenous communities, and/or would adversely impact - directly or indirectly - on the environment of indigenous peoples' territories, and/or would affect their rights. This includes activities such as:

1. economic or other development activities;
2. natural resources exploitation;
3. commercially oriented or academic research;
4. resettlement of indigenous communities;
5. creation of protected areas or imposition of restrictions on subsistence resource use;
6. colonization within indigenous territories."¹⁸

WWF states that it will "ensure that such partnerships do not undermine, and if possible serve to actively promote, the basic human rights and customary resource rights of indigenous peoples". The desk study of existing laws, policies, regulations, directives, and practices at the National Parks and information provided by Indigenous Women during fieldwork reveals that none of those rights and interests of Indigenous Peoples and WWF principles concerning Indigenous Peoples are ensured by WWF in Bardiya National Park that they have been supporting for about two decades. WWF states, "Whenever it promotes conservation objectives, and in the context of its involvement in conservation activities affecting indigenous peoples' lands and territories, WWF will encourage governments to "take steps as necessary... to guarantee effective protection of indigenous peoples' rights of ownership and possession" of those

¹⁸ WWF International. op. cit. p. 7.



lands and territories, as determined by the ILO Convention 169 (Art. 14)."

LAHURNIP and NIWF (2019), in its fact-finding mission report about violations of human rights by the Chitwan National Parks, writes about allegations against WWF,

"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 "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 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.

Internal documents obtained by BuzzFeed News, show that the charity WWF provided 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."¹⁹

19 Limbu, Shankar, Yogeshwar Rai, Chinimaya Majhi, Dinesh Ghale, Amrita Thebe and Sanjog Lafa Magar, op. cit. pp. 38-39.

Compatibility of the Acts and Regulations with the UNDRIP and ILO Convention No. 169

The laws and policies of the government are against the UNDRIP²⁰ and ILO Convention No. 169²¹ Nepal is a party to (See Provisions in Box 1 and Box 2).

Box 2. The UNDRIP provisions relating to lands and resources that are not compatible with the laws and policies of the Nepal government

Article 8

- 1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.*
- 2. States shall provide effective mechanisms for prevention of, and redress for:*
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;*
 - (b) Any action which has the aim or effect of dispossession of their lands, territories or resources;*
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;*
 - (d) Any form of forced assimilation or integration; (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.*

6 Article 9 Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right. Article 10 Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

20 United Nations. 2007. United Nations Declaration on the Rights of Indigenous Peoples. New York: United Nations.

https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

21 ILO. n.d. C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169). Genève: International Labour Organisation.

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169



Article 18 Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions.

Article 19 States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 25 Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27 States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28 1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources of equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. *Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.*
2. *States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.*
3. *States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.*

Article 30

1. *Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.*
2. *States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.*

Source: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

Box 3. ILO Convention No. 169 provisions that are not compatible with the laws and policies of the Nepal government

Article 7

4. *Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.*

Article 13

1. *In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.*
2. *The use of the term **lands** in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.*



Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18 Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

Source: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::N0::P12100_ILO_CODE:C169

III. VIOLATION OF INDIGENOUS WOMEN'S RIGHTS

Chhabilal Neupane and Chitra Bahadur Majhi provide detailed information about violations of human rights in their book "*Samrakchhit Chetra ka Dwanda*, ("Conflict of Conservation Areas") *Chitwan Rastriya Nikunja Prabhawit Samudayaharuko Adhyan*" published in 2016. They had carried out a case study on affected IPs by the Chitwan National Park (CNP). Trilateral dialogue and study report on the development and its impact on the ancestral land of the Indigenous Peoples by Mahendra Dura,²² published in 2011, shows gross violations of human rights of Indigenous Peoples by the national park officials. The Fact-Finding Mission of LAHURNIP and NIWF (2020)²³ provided information about human rights violations, including killings, death after alleged torture in Chitwan National Park (CNP), mistreatment and sexual abuse, arbitrary, detention, and sexual abuse, mistreatment, arbitrary, detention and sexual abuse, harassment of local people such as seizing of goods, involuntary work, verbal abuse/slandering, and physical abuse and torture.

The report's findings also include problems of Statelessness and violating the right to citizenship, violation of lands rights and displacement from conservation, loss of traditional livelihoods, fishing and boating rights, ecological crises, and rights to ferrying points. Also, the reports show violations of rights relating to timber and non-timber forest products (NTFPs), agriculture, animal husbandry, and grazing practices, and threats posed by wild animals to people. The mission has found violations of cultural rights manifested in the forms of loss of cultural identity, sacred spaces and nature, community empowerment and representation, conflicts and racism, and question on poaching cases (LAHURNIP and NIWF 2020).

22 Dura, Mahendra 2011. "Trilateral dialogue and study report on the development and its impact on the ancestral land of the Indigenous Peoples". Kathmandu: LAHURNIP.

23 Limbu, Shankar, Yogeshwar Rai, Chini Maya Majhi, Dinesh Ghale, Amrita Thebe and Sanjog Lafa Magar, op. cit.



International newspapers have corroborated such violations of human rights. According to BuzzFeed News of 4 March 2019, "Chitwan's forest rangers work alongside over 1,000 soldiers from the park's army battalion. Nepalese law gives them a special power to investigate wildlife-related crimes, make arrests without a warrant, and retain immunity in cases where an officer has "no alternative" but to shoot the offender, even if the suspect dies. Chitwan's chief warden serves as a quasi-judge who for years had the ability to dole out 15-year prison terms himself (a recent constitutional amendment transfers all criminal cases that require sentences longer than a year to district courts)."²⁴ Furthermore, according to the BuzzFeed News, "Indigenous groups living near Chitwan have long detailed a host of abuses by these forces. Villagers have reported beatings, torture, sexual assaults, and killings by the park's guards. They've accused park officials of confiscating their firewood and vegetables, and forcing them into unpaid labor."²⁵

The statement by Amnesty International on 21 July 2020 clearly shows to what extent the human rights of Indigenous Peoples, including Indigenous Women, are violated by the National Parks and Conservation Areas in Nepal. In a statement issued on 21 July 2020, Amnesty International said,

"Nepal's authorities must immediately halt the forced eviction of the Chepang Indigenous peoples from their settlements and ensure those responsible for the destruction of ten homes are held accountable, Amnesty International said today.

On 18 July 2020, the authorities at Chitwan National Park, a UNESCO World Heritage site, set two houses ablaze and destroyed eight others with the use of elephants. The attacks were carried out without any prior warning. The Chepang families, belonging to one of Nepal's most marginalized Indigenous communities, lost not

24 Warren, Tom and Katie J.M. Baker 2019. WWF Funds Guards Who Have Tortured And Killed People. Posted on March 4, 2019, at 3:26 a.m. ET.

WWF Funds Guards Who Have Tortured And Killed People ([buzzfeednews.com](https://www.buzzfeednews.com))

25 Ibid.

just their homes but also their money, identity documents and other possessions.

“Forcing anyone from their homes is an act of cruelty. To do so with the use of arson and charging elephants, risking lives and destroying the few possessions of an already marginalized community, is unconscionable and a human rights violation,” said Nirajan Thapaliya, Director of Amnesty International Nepal.

“The Chepang community must be protected. Any further attempts to force them out of their homes must be stopped. The people who have been forcibly evicted must be given effective remedy including adequate alternative housing and compensation. Furthermore, the perpetrators responsible for these forced evictions should be held accountable for their actions.”²⁶

Again On 31 July 2020, BuzzFeed News reported serious violations of human rights that occurred during COVID19 lockdown in Nepal, "BuzzFeed News has previously detailed WWF's decades long support for the armed guards that fight to poach at Chitwan National Park. During that time, Indigenous villagers have accused the guards of beatings, torture, sexual assaults, and killings. Park officials have confiscated their firewood and vegetables, they allege, and forced them into unpaid labor."²⁷

In this study, during the FGDs and KIIs, the following violations of Indigenous Women's rights were shared by the participants. The study covered only a few communities and community members, there may be more incidents of violations of human rights of Indigenous Women by BNP, DPHG, and KTWLR.

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- 26 Amnesty International 2020. Nepal: Authorities must stop ruthless evictions of Indigenous peoples.
<https://www.amnesty.org/en/latest/news/2020/07/nepal-authorities-must-stop-ruthless-evictions-of-indigenous-peoples/>
- 27 Baker, Katie J.M. and Tom Warren 2020. WWF Says It Is “Troubled” By An Alleged Human Rights Violation At A Park With A History Of Violence. Posted on July 31, 2020, at 10:52 a.m. ETWWF "Troubled" By New Alleged Human Rights Violation ([buzzfeednews.com](https://www.buzzfeednews.com))



The participants of all FGDs and KII said that they are not aware of any case of rape, murder, fake marriage, stabbing, disabling, pointing a gun, deprivation of food, deprivation of medical care, confinement, detention, custody, jail, bribe, choking, forced isolation from friends and relatives, threats of reprisal, including harm the children and other family members, destroy house/property, or of further violence, denial of rehabilitation. This information should be taken with caution that such cases might have happened but it may have happened in other communities which they are not aware of, that there may have been such cases which they do not want to share it due to fear of reprisal Indigenous.

The participants of FGDs and a community-level interaction program, however, have reported the following incidents or cases that clearly show continuing violation of human rights by BNP, DPHR, and KTWLR.

Violations of the Rights of Indigenous Women

Concerning violations of the Rights of Indigenous Women, the findings from FGDs, community-level interaction program and key informant interviews are as follows:

No collective ownership and control over ancestral lands

Indigenous Peoples, especially the Tharu in the BNP and KWLR, and the Magar, Bhote, and Bhujel in the DPHR. The Core areas are owned by the State. The buffer zones in Bardiya NP and Koshi Tappu WLR also, Indigenous Peoples have no control over their ancestral lands. Instead, the whole community, including Bahun-Chhetri, Dalit, Madhesi who live in the Buffer zone manage forests and natural resources.

Limited access to and use of natural resources

Indigenous Women of Dhorpatan enjoy access to the core areas than their counterparts elsewhere. An army camp was established in Dhorpatan three years ago despite of a big protest from Indigenous Peoples and other community members, especially the Dalits.

Indigenous Peoples and other local community members are "legally" allowed to collect grass, firewood, and some tree based on their needs but with permission from the Hunting Reserve Center. In Bardiya and Koshi Tappu, Indigenous Peoples are allowed to enter the forest/grazing land three days a year, which they call as *KharKhadai*. However, Indigenous women "illegally" enter the national park/wildlife reserve almost every day to make their living by using their customary practices, knowledge, skills, and practices (Table 3). Understandably, the Hunting Reserve center will do the same in the future, i.e. to allow for specified days to enter the core area. The Hunting Reserve Center is planning to declare a buffer zone but Indigenous Peoples and the local communities are strongly opposed to such a move by the State. The government considers it "legal" but the customary self-government systems of Indigenous Peoples consider it "illegal".

Table 3. List of "legal" and "illegal" use of natural resources

S.N.	Natural resources	Bardiya National Park (BNP)		Koshi Tappu Wildlife Reserve (KTWLR)		Dhorpatan Hunting Reserve (DHG)	
		"Legal"	"Illegal"	"Legal"	"Illegal"	"Legal"	"Illegal"
1.0	Household Materials						
1.1	<i>Daura</i> or <i>Jarna</i> (Firewood)	√	√	√	√	√	√
1.2	<i>Badhani (Kucho)</i>	√	√				
1.3	<i>Khariya</i> (for making wall)	√	√				
1.4	<i>Sentha (Bhakari)</i>	√	√				
1.5	<i>Karord</i> (long vine to make rope)		√				
1.6	<i>Patiya (Saal leaves)</i>	√	√				
1.7	<i>Moharyang</i> (make <i>tapari</i> \leaf plate))		√				
1.8	<i>Bhela</i> (big leaves used for eating foods)		√				
1.9	<i>Punja</i> (Rope)	√	√				
2.0	Resources required for ritual						



2.1	Agai (Thetuni (leaves)) (Leaves required to feed during marriage)		√				
3.0	Fodders						
3.1	Grass	√	√				
3.2	<i>Jhala (Dale ghangs (a kind of fodder))</i>	√	√				
3.3	<i>Chagarduwadhi (Lahareghans (vine grass))</i>		√				
4.0	Wild Tree Branches						
4.1	<i>Salla (Pine)</i>						√
5.0	Wild vegetables						
5.1	<i>Kochya (Niuro)</i>		√				
5.2	<i>Perara (Curry)</i>		√				
5.3	<i>Karala (Kurilo)</i>		√				
6.0	Wild fruits						
6.1	Bel (Stone apple)		√				
6.2	<i>Kosam</i>		√				
6.3	<i>Jamun (Balc berry)</i>		√				
6.4	<i>Ten</i>		√				
6.5	<i>Anura (Aamala) (Gooseberry used in making pickles)</i>		√				
7.0	Aqua foods						
7.1	<i>Ghongi (snails found in a pond)</i>		√				
7.2	<i>Fish (Macchi, such as Jhinga, Charangi, Chewar, Rawa, Baam, Dhong etc.)</i>		√				
7.3	<i>Fish (Panthi, Madan maroar, MungriKangkharetc.)</i>			√	√		
7.4	Fish						√
7.5	<i>Gengata (Crab)</i>		√				
7.6	<i>Kechuhiya (Turtle)</i>		√				
8.0	Herbs						
8.1	<i>Dadari (brew Jaand (locally brewed beer))</i>		√				

8.2	Karala (Kurilo (asparagus))		√				
9.0	Wild animals						
9.1	Catch Danfe (Himalayan Monal or Mpeyan pheasant) for annual ritual and release						√
10.0	Grazing						
10.1	Cow, Ox, Horse				√		√

Source: Field work, 2020.

Note: L = Legal IL = Illegal

Plan of forced displacement in progress

During FGDs, KIIs, and community level interaction, there was no reported case of forced displacement from the core areas as these are away from the communities, except the one in the KTWLR. An Assistant Warden working at a Sector Office said, during a KII, "They are planning to evict "encroachers" living at the Gamaria Tole in Jagatpur, Kanchanpur (Ward no. 4) from the KTWLR. The research team visited the settlement mentioned by the Assistant Warden and found that 11 Tharu households, with 4 to 8 family members in each, along with some Musahar households, live just inside the core of KTWLR. These Indigenous Tharu used to live nearby the Koshi river before the establishment of the KTWLR. After the destruction of their lands by river flood, they moved to this present place and settled. Nepal's government has leased some parts of the land of the KTWLR area to India for 99 years.

Before coming to this area, they used to live further inside the KTWLR area at the river bank but due to floods they were displaced and came to live in the present area. They were not aware that the authorities have decided to evict them from this place and they are not aware of their rights ensured by the ILO Convention No. 169 and the UNDRIP. They all are living inside but at the border of the core areas. They had settled here a few decades ago as they were displaced by floods. Their previous settlement was inside the core areas. During our KII with the Assistant Warden, who happens to be a local Tharu, said that they are going to move them outside the



core area and that they are planning to demolish the houses by using dozers. Both the Assistant Warden and the Indigenous Women and Men of those communities were not aware of the provisions of ILO Convention No. 169 and UNDRIP that Indigenous Peoples cannot and should not be displaced by the State without obtaining their free, prior and informed consent (FPIC). They have no plans for obtaining their FPIC to do so. It would be a violation of their human rights if the KTWLR carry out their forced displacement of these Indigenous Peoples.

Denial of self-governance or self-government systems, customary laws, and institutions

All participants of FGDs and KIIs conducted in Bardiya said that they have a vibrant, robust and very well-functioning customary self-government systems, i.e. *Bargar*, but the BNP ignores them as if they do not exist. The BNP authorities not only obtain their FPIC but also never consult in both legal and administrative matters that affect them directly and/or indirectly. Many of the participants noted that at least the local government consult before implementing development works in their villages. In the KTWLR, the participants of some FGDs and some KIIs said that they used to have their customary self-government systems known as *Jebar* but it is on the verge of extinction and that they are trying to revive it. In Dhorpatan, the participants of the community-level interaction program and KIIs said that they do have their customary practices but not formal customary self-government systems, such as *Veja*.

Government's failure in obtaining Free, Prior and Informed Consent (FPIC) from Indigenous Peoples

All the participants of FGDs, KIIs, park officials (Warden, Assistant Warden, Ranger, and Game Scout) said that they follow the law. There is no policy and mechanism for obtaining FPIC from Indigenous Peoples from planning to implementation and monitoring and evaluation of the policies, plans, and programs of the national parks/wildlife reserve/wildlife hunting reserve. All the participants of the FGDs and KIIs univocally said that the park officials neither

consults them nor obtains FPIC from Indigenous Peoples. During a community meeting and interviews with KII, Indigenous Peoples and other local peoples of Dhorpatan had strong objections against the permanent presence of the Nepal Army to give security to the DPHGC. They stated that they had a big public demonstration in front of the DPHGC office at Dhorpatan. Nepal Army established its camp at Dhorpatan without obtaining FPIC from the concerned Indigenous Peoples, especially the Magar, Bhote, Bhujel, and Thakali. During the public meeting organized by NIWF for this and other studies, participants raised their concerns about the government's preparation for a declaration of the buffer zone. The Ranger, and Captain of the army, in their speech, said that the buffer zone would be a boon for local people. They will get 30% to 50% of the income from the DPHGC for local community development.

Criminalization of customary knowledge, skills, technology, and practices

The laws and policies on the National Parks, Wildlife Reserves, and Hunting Reserve have criminalized Indigenous women's customary practices in accessing natural resources from generation to generation. Instead, the laws relating to the forest, water, and NPs, WLR, HG, and conservation areas have criminalized their customary practices. Many participants said, "How can we be thieves, deviant or criminal when we have been doing from generation to generation?" Some said, "How can we become criminals when we use the stuff of our own home [ancestral land]?"

Collections of wild medicinal plants from the forests have been their traditional way in Dhorpatan. They use such plants for medical use, and some people sell them in the local market to make their livelihood. Now, after the militarization in DPHR, it has been prohibited. As the hospital and clinic are very far, they don't have access even to first aid. Thus they have to depend on the local medicinal plant.

Magar Indigenous Peoples perform their traditional spiritual ceremonies in the middle of the virgin forest in DPHR by burning *Dhupi* (Juniper) as incense. Cutting juniper leaves has now been prohibited. As a result, the Magar communities are



facing challenges to sustain their customary practices. The Magar community has to trap *Danfe* (Himalayan Monal or Mpeyan pheasant, i.e. the national bird) alive and carry from North to South and fly it by tying leaves on the leg of the bird. The government has made catching *Danfe* illegal. Hence, the Magar community uses Pigeon to continue their rituals.

Loss of culture and spiritual sites

Participants of FGDs and the community meeting mentioned the following violations of Indigenous People's rights in terms of loss of culture and spiritual sites due to BNP, DPHR, and KTWLR:

1. Tharu Women participants of all the FGDs said that they have a custom of celebrating *Kulpuja* or *Pani Puja* at a river at the Pattharba in the forest every year. *Pan Guruba* carry out *Puja* one day and one night. They sacrifice pigs, chicken, duck, and lamb. Tharus from nearby fourteen villages gather to celebrate this *puja* (“worship”). As this sacred site is inside the Bardiya National Park, the park officials do not allow them to celebrate it inside. So, they have moved their site of celebration outside the national park.
2. In Bardiya, FGD participants said, “We mandatorily give *Pater* (*Typha angustifolia*) to our daughters during the Badhani ritual in her wedding; unfortunately, the BNP prohibits us from using such customary practices.”
3. Magar Indigenous Peoples of Dhorpatan perform their traditional spiritual ceremony in the middle of the forest by burning Dhupi (Juniper) leaves as incense. As the DPHR has prohibited the Magar community members from cutting Juniper tree branches, their challenge now is to sustain their customary practices. For the rituals, the Magar community has to catch a live Himalayan *Monal (Impeyan pheasant) bird from the Northern part of their ancestral lands and fly it to the* Southern direction by hanging tree leaves on its legs. They now use Pigeon, instead of *Monal*, to continue their distinct identity.
4. In the KTWLR, Tharu women and men of Saptari celebrate



Ladi (Koshi or Nadi) Puja (worship) every year during *Poush Purnima* (Full moon day in December-January). In the past, they used to celebrate at the riverbank of the previous Odaha Village Development Committee and Kamalpur Village Development Committee. The KTWLR prohibited celebrating there. So, they have been celebrating it at the Jagatpur Village Development Council for the last 10-12 years.

Loss of livelihood

During FGDs in Bardiya and Koshi Tappu, all the participant Indigenous Women said that the elephants, wild boar, and other animals destroy crops, including paddy, wheat, potato, and seasonal vegetables. They, therefore, have stopped cultivating their lands. The respondent official of the park and conservation areas said that elephants have a customary habit of walking in the same way that their parents had walked; hence, they have a right of way, which has been obstructed by human settlements. Some participants said that their ancestors and elephants lived together without fences and they had never any obstruction of each other's way. However, now a day, rising number of immigrants and development aggression, both elephants and Indigenous Peoples, including Indigenous Women are finding hard times making their living.

Lack of access to their territories and tenure rights

Tharu and Magar Women strongly believe that their lands, territories, and resources, including forests, and grasslands, which they collectively owned, controlled, and managed collectively by themselves in the past, are now controlled by the government. Those Indigenous Peoples who still live inside the protected areas have no tenure rights. The officials of the protected areas allowed them to continue their tradition for few years of its establishment. Later, gradually they started restrictions in the use of forest resources by Indigenous Peoples. At present, they are allowed to enter the protected areas to collect selected natural resources just for four days a year. Many of them suspect and fear that the government may close it for good in the future. Despite restrictions for 361 days a year and



the criminalization of their customary practices by the government, Tharu, Magar, and other Indigenous Women living nearby the Wildlife reserve/Hunting Reserve enter "illegally" in a group, and often they are caught by the "army" or rangers and get physical or psychological or monetary punishment.

Lack of meaningful access to justice and compensation

Participants of FGDs in Bardiya and Koshi Tappu said, "there is a lack of meaningful access to justice and compensation." They further said that they have left planting crops due to the damages done by elephants and other wild animals. In Bardiya, they watch overnight staying in a temporary hut erected high above the ground. In Koshi Tappu, we observed farmland left barren. The Assistant Warden of KTWLR said that the affected families get compensations for the crops not being harvested or damaged by wild animals. However, they can be eligible for only if they could produce recommendations from the Chairperson of the buffer zone and apply at the KTWIL office. He said that it takes some time to process it and provide compensation to eligible ones. The participants of the FGDs said that it is very inconvenient to get recommendations from the Buffer Zone User's Group and apply at the KTWLR office. They complained that they give a negligible amount of money, which too takes more than a year. Some participants and key informants noted that when will they get justice and relation of the loss of collective ownership, control, use, and management of their ancestral lands?

No Participation in making decisions

The three protected areas have three different types of representation of Indigenous Peoples in decision-making positions. These are:

- (a) The Warden of the KTWLR is a Tharu from another district, and an Assistant Warden is a local Tharu;
- (b) In DHG, the decision-makers are non-Indigenous Peoples; and

- (c) An Assistant Warden of BNP belongs to the Hill Indigenous Peoples.

During KII, decision-makers, who belonged to Indigenous Peoples, said that they have to follow and abide by existing laws and so they cannot do any favor to Indigenous Peoples going beyond the laws and regulations and that they are not familiar with the UNDRIP and ILO Convention No. 169. FGD participants and KII of Bardiya, said that the main leaders of the customary self-government system Badghar are not even consulted by the BNP officials. All the participants of all FGDs and KII said that Indigenous Peoples have no participation in the decision-making of BNP, KTWLR, and DHG.

Racial discrimination

The participants of FGDs in Bardiya shared some incidences of racial discrimination. These are:

1. FGD participants of Shivapura, Hattisar in Bardiya, many Bahun women produce locally distilled liquor day and night. So, they need firewood. They collect firewood when they go to the BNP to collect fodders. The officials penalize the collection for stealing.
2. One of the park officials of BNP said that the Ot (a wild animal) used to eat fish, but they are already extinct, implying that the Tharu and other local people, not the park officials, were responsible for its extinction.
3. One of the Park officials of BNP alleged that poachers and loggers "abuse"/"misuse" Tharu community members in Bardiya, Chepang in Chitwan NP in organized crimes, and gave an example saying that 37 trees with 200 cubic feet were illegally felled down by the locals last year.
4. One of the key informants of the BNP said that animals follow their traditional ways from generation to generation. For example, Elephants remember the way their parents and ancestors had crossed. Hence, they do not like any obstruction on these paths

created by human beings.

Abuse, Harassment, and Mistreatment

Concerning abuse, harassment, and mistreatment, the findings from FGDs, the community-level interaction program, and key informant interviews are as follows:

Alleged rape

It would be difficult to get information about sensitive issues, such as rape, in a short period of fieldwork. However, participants of FGDs and the community-level meeting shared the following information about some alleged rape cases and alleged sexual abuse. These are:

1. The participants alleged that Sita Buda was allegedly raped by army personnel while collecting fodder in the forest in DPHR. They said that the officials gave her Rs. 100 (1 USD) to shut up her mouth. They did not register the case at the police station. They said that the army personnel was posted in another district overnight to diffuse it.
2. One of the participants made an allegation against army personnel of DPHR that they allow young girls to enter the forest to collect fodders and firewood.
3. Some participants of the community-level meeting at Dhorpatan shared information about an incident about an attempted rape of a 55-year-old woman by three army personnel while the woman was collecting fodders in the forest.
4. Some participants made an allegation against army personnel of DPHR that they detain and punish aged women without any wrongdoing. Also, they suggest young girls come the next day to collect the fodder in the forest.

The participants of the community-level meeting shared information about such alleged incidents that occurred within two years of the militarization in DPHR. They said that they are aware of ILO C.

169, UNDRIP. On the contrary, the army personnel and officials of the DPHR do not recognize international laws, including ILO C. 169. The community members emphasized that the government has to abide by ILO C. 169 and UNDRIP.

Alleged torture/Inhuman treatment

Participants of FGDs in Bochahi in Ward No. 6 of the Saptakoshi Municipality mentioned an incidence of gross violation of Indigenous Peoples' and Indigenous Women's rights. The alleged survivor herself, who was present in the FGD, said her story of an inhuman treatment which she had recently experienced by herself. The story is as follows:

"Two weeks ago, I went along with our 5/6 women friends from our village. I needed to collect fodder for my goats. I went there without carrying a sickle or a stick. My husband has gone outside the village for work. I have 13 days old infant. I had to go with my friends. Otherwise, I had nothing to feed the goats. About 6 to 7 'army' saw me plucking leaves from a tree. They scolded. They ordered me to do 100 *uth-bas* (sit down and rise up). I requested that I am unable to carry out their order. I am still going through a post-partum period. They did not listen to my plea. I had to do it. I somehow did it with great difficulty. After that incident, my body was aching for several days. I had terrible times."

All the participants, including the witnesses, said that it was unthinkable that the army personnel could do so.

The participants FGDs in Thakurdawara in BNP recalled an incident that happened 20 years ago. They had experienced inhuman treatment from the park officials. Therefore, they get scared to enter the BNP since then. Those participants who had experienced it said that about 70 Tharu women went into the forest to cut *Barani* to make brooms, and about 15 to 16 army personnel saw them and detained them. They alleged that the army personnel had surrounded them and forced them to line up by showing guns. They recalled that they

cried due to fear that they might get killed by them. They alleged that the army personnel took them 5 km away, seized their sickles, and locked them up for a day. They also alleged that the women were not permitted to nature's calls and did not get drinking water to quench their thirst. Later, the wildlife reserve officials released them after paying a fine of Rs. 100 each. They claimed that they get afraid of going to the forest after that horrible incident.

Alleged forced entry or raid in the house

The participants of the FGDs recalled a fresh incident that happened two weeks ago in the BNP. They alleged that two Tharu women went to the nearby river, bordering the core area of the BNP and its buffer zone, for fishing using *Helka* (small net). They were not aware of the fact that the park officials regularly monitor their activities by watching CCTV. The Tharu women saw a vehicle with army personnel approaching them. They ran away and took refuge under the bed in their home. They alleged that one of the woman park officials entered her home, though they did not expect them to do so in the buffer zone area, and asked them to come out. They claimed that she tried to pull her hand, but she strongly protested and quarreled with her. Later they left.

Confiscation of fishing net and hook, basket, ropes, Namlo ("carrying band"), sickle, etc.

Confiscation of equipment used in fishing and collecting other natural resources is ubiquitous in the BNP, DHG, and KTWLR. Many participants shared their stories about how army and park officials, such as game scout, confiscation of fishing net and hook, basket, ropes, *Namlo* ("carrying band"), sickle, etc., during the community meeting in Dhorpatan.,

Taking picture without permission

The participants of an FGD in the Shivapura in Bardiya recalled an incident that happened two years ago. They were around 5-6 Tharu women who went to the forest to cut green firewood. Two army men

hold their hands to confiscate their sickles. They alleged that the army personnel took their pictures and feared why they did so. They returned their sickles after half an hour.

Burning of confiscated fire woods

Many participants of the FGDs conducted in DWLR said that army personnel frequently catch them when they collect or carry firewood, and confiscate and burn them immediately to their surprise.

Fines

BNP and KTWLR are open for the public for three days every year, in the months of Mid-December to mid-February, to collect *Khar-Khadiya*, grass, and some dry firewood. Each individual should pay Rs. 100 to use this privilege. Park officials said that they need to get a permit if they should demand the collection of any needed forest resources at other times of the year. For example, the villagers often get a permit to collect *Saal* leaves that are required during wedding ceremonies. However, in DPHR, Indigenous Women and others could enter the forest to collect grass and dry firewood any time in the year, except on holidays. It may be because the Army came in the core area despite strong protest movements from the Indigenous Peoples and other local communities. Currently, the community members are against their plan to declare the buffer zone. The officials said that they have been permitted to enter the core area because they know that they have their customary practices of doing so, which they would like to respect, though the existing law permits only for three days a year. Some KIIs from Dhorpatan anticipated that the officials may implement the three-day rule at any time, whenever they feel comfortable to do so. Some KIIs and FGD participants of BNP and KTWLR suspected that the government may scrap for good the existing provision of entering the core area for three days. But many FGD participants and KIIs opined that they should be legally permitted to enter the core area to continue their customary practices of making their livelihood, ensure food security

by collecting perishable seasonal vegetables, grasses, fodders, *ghongi*, fish, firewood, and materials used in making their customary house. They said that despite fear of arrests or abuse or punishment of fine in cash, they often enter in a group in the core area to carry out their customary practices of collecting these materials that are necessary for their everyday life.

Fines are common in BNP, KTWLR, and DPHRC. FGD participants in Bardiya initially denied that they do not enter the core of the BNP “illegally.” Later they admitted that they do enter the core area quite frequently as needed. On the other hand, all the FGD participants in Saptari said that they “illegally” enter the core area frequently, almost every day in the season. In Dhorpatan, they are allowed to enter during office time in the working days. They are not allowed to collect anything they want; instead, they could collect permitted things only. When caught “red-handed,” the “army” personnel ask them to pay fines of Rs. 500 for collecting firewood and Rs. 2,500 for catching fish.

According to some of the Indigenous Women participants of the community-level meeting at Dhorpatan, the government had introduced the army in the DPHR without obtaining their FPIC. The community members were not fully aware of it as well as the legal process of DPHR. Those Indigenous and non-Indigenous peoples who possess fishnets were charged a fine of Rs 1000 (10 USD). Furthermore, there is no specific rate of fines; instead, they do whatever they like. After that, the fishing community asked them to get licenses, but they have not issued any licenses. The army personnel prohibited fishing even in the fishing season.

Lack of meaningful implementation of ILO C. No. 169 and the UNDRIP

Interviewed officials and army personnel of the NP, WLR, and DHG said that they are not aware of international instruments of human rights, including ILO Convention No. 169 and the UNDRIP. They

asserted that they must work based on existing national laws related to national parks, forests, and conservation; hence, they follow the laws of the National Parks, Hunting Reserves, Conservation Areas, Forest laws, and Buffer Zone regulations. The official of the KTWLR said that national parks, conservation areas, hunting reserves cannot and should not be administered based on the outdated National Park Laws of 2029 B.S.. He said that it must be updated to address current issues.

1. DPHR Ranger Mr. Dependra Kafle said in the closing session of the community interaction that he was now very clear about what the community members expect from DPHR. He accepts that it was their first interaction program with the community members on Indigenous Peoples' issues relating to DPHR. He conceded that no other organization, including the DPHR, had initiated any interactions with the community members. He further noted the need for policy revisions to enhance mechanisms to benefit community members. The Ranger conceded that the DPHR policies do not reflect internationally recognized standards and guidelines. Further, no official guidelines are in place to mainstream human rights instruments-ILO C. 169, UNDRIP, and CEDAW in conservation works. The government has revised the National park policy; currently, it is at the 4th stage of revision, but it still lacks addressing community issues and concerns in meaningful ways. The Ranger emphasized a need to ensure formulating all the national policies on DPHR by the government in close consultation with the affected populations and communities.
2. Nepal Army Major Keser Jung Budathoki expressed his surprise and gratitude for the interaction leading to the sharing of views from the community. He thanked the organizing team for facilitating direct and effective interaction with the community members affected by DPHR. He responded to the questions raised by the participating community members about the management

of the resources, such as firewood. He informed about the community guidelines on the collection of such resources by military personnel. He said that community leaders would get a lea-way to monitor the scale and frequency of resource usage to ensure collaboration between the military and the community. Addressing the community queries, he suggested the community members come to check the quantity and use the firewood by army personnel. Finally, he reiterated that the purpose of the military presence was to support the community and wildlife conservation.

3. Ward Chair Hari Bahadur Gharti Magar thanked the organizing team for an effective interaction program to solve the conflict between DPHR and Community. He shared his view that the most impacted from the discriminated policy of DPHR was for Magar Indigenous Communities and women are under threat. The women are more vulnerable and face insecurity during going to the forest. But, women have to use the forest resources for making their livelihood. They raise cattle, cook, recognize wild vegetables and medicinal plants. They, however, do not feel safe carrying out such activities. So, the policies need revision, and militarization needs to be adjusted to reflect community needs and asks. He further recognized the role of the Magar Indigenous Community as protectors of the forest and wildlife from generation to generation. They have knowledge of sustainable management shared through customary practices and language. The Ward Chair opined that all official interventions would be better if guided by the communities given so much wealth of knowledge in the community.
4. Deputy Mayor Karmati Gharti Pun Magar suggested for having regular sessions of the interaction program to address community issues and concerns in the DPHR policy and planning. As a Deputy Mayor, she was updated on the policy and planning of DPHR but noted that there still needed to be more done to

promote community based HR and increase direct benefits of the community. There was a very big gap understanding of Hunting Reserve planning and process, because it was directly programed from National Level, thus she suggested that the organizing team lobby directly in the national level for the policy revision and address community issues and concerned. She also promised the community that, from her level, she will try her best to address the concerns and issues of DPHR in the municipality.



IV. SUMMARY, CONCLUSION AND RECOMMENDATIONS

Summary

Nepal has an established network of Protected Areas system with 12 National Parks, 1 Wildlife Reserve, 1 Hunting Reserve, 6 Conservation Areas, and 13 Buffer Zones extending from lowland Terai to high mountains, covering 23.39 % of the total country's land.

The main objectives of the research are two: (a) to review laws and policies related to National Parks, Wildlife and Hunting Reserves, and (b) to find out situation of violations of Indigenous Women's rights by selected National Parks, Wildlife and Hunting Reserves.

This study is based primarily on desk review of the main laws and policies of national parks, wildlife conservation and hunting reserve, and focus group discussions with Indigenous women in the community who are using its resources. Bardiya National Park (BNP), Koshi Tappu Wildlife Reserve (KTWLR), Dhorpatan Hunting Reserve (DPHR) and Makalu Barun National Park (MBNP) were purposively selected. Field works were carried out from February to April 2020.

Policy review of laws and regulation revealed that there was no consultation and participation of Indigenous Peoples, including Indigenous Women, in making of the Act, no FPIC obtained by the government, These are "welfare" based, not the rights based and all definitions of the key concepts relating to national parks and conservation bluntly exclude Indigenous Peoples. Further, laws and regulations criminalize customary practices and weaken customary self-government systems of Indigenous Peoples. Nepal Armies are being deployed despite objection from Indigenous Peoples.

Internal partners like WWF has its principles and identified rights of Indigenous Peoples in line with UNDRIP and ILO Convention

No. 169 but it fails to translate it into the policies and practices of National Parks and Conservation Areas.

Violation of Indigenous Women's rights include no collective ownership and Control over ancestral lands, limited access to and use of natural resources, plan of forced displacement in progress, and denial of self-governance or self-government systems, customary laws and institutions. Further, government's failure in obtaining FPIC from Indigenous Peoples, criminalization of customary knowledge, skills, technology and practices are evident. Loss of culture and spiritual sites, and livelihood, and lack of access to their territories and tenure rights, and meaningful access to justice and compensation of access to justice and reparation, including restitution and compensation are troubling. No Participation in decision making, racial discrimination continue.

Abuse, harassment and mistreatment includes incidences of rape torture/inhuman treatment, forced entry or raid in the house, confiscation of fishing net and hook, basket, ropes, *Namlo* ("carrying band"), sickle etc., taking picture without permission, burning of confiscated fire woods and fines.

Fortunately, Nepal has ratified dozens of international laws, including the ILO Convention No. 169 and ICERD, and adopted several declarations, including the UNDRIP. Hence, the government can be made accountable to gross violations of Indigenous women's and Indigenous Peoples' human rights as its meaningful implementation is conspicuously lacking.

Conclusion

Human rights violations against Indigenous Peoples are rampant in Nepal because Nepal has been ruled by racist Bahun-Chhetri, who are now constitutionally recognized as "Khas Arya" have been using policy and practices of genocide, specially cultural genocide, since the territorial integration of Nepal by King Prithvīnārāyan Shah in



1768. It is indeed a tragedy that, since then, grabbing of indigenous peoples' lands, territories and resources by the dominate caste groups continue unabated. The constitution of Nepal promulgated in 2015 is not owned by the movements of Indigenous Peoples and Madhesi as it gives constitutional recognition of Khas Arya racial supremacy, compromised secularism directed by Hindu religion and culture, and is solely based on individual and group rights, but not collective rights of Indigenous Peoples., As its logical consequences Indigenous Peoples, Indigenous women continue to become refugees in their ancestral lands and territories. Nationalization of private forests and establishment of national parks and conservation areas have put fuel into a fire. Khas Arya are the main decision makers who are represented at all levels of decision making out of proportion to their total population. Violation of human rights is serious from local to federal levels. Hence, violations of human rights in National Parks and Protected Areas are a part of this larger problem.

Violations of human rights of Indigenous Women documented in this report are tip of the iceberg. Nepal government, including the Park and Conservation officials, Nepal Army and international development partners who are supporting National Parks and Conservation Areas in Nepal must be made accountable to such violations.

Recommendations

The main recommendations to various actors are as follows:

Recommendations to the Legislature-Parliament and the Cabinet (Council of Ministers)

1. Change and/or amend existing constitution, all laws, especially National Park and Wildlife Conservation Act, 2029 (1973), and Himalayan National Park Rules, 2036 (1979), and all regulations making these fully compatible with Nepal's Commitment to international laws, especially the UNDRIP and ILO Convention No. 169.
2. Formally recognize Indigenous Peoples as custodians of their

respective ancestral lands, territories, and resources, biodiversity etc., and give collective ownership, control, access, use and management of National Parks and Conservation Areas by the concerned right holder Indigenous Peoples.

3. Establish a Mechanism for obtaining Free, Prior and Informed consent (FPIC) in line with the UNDRIP at all levels from the federal, provincial and local government levels to community levels.
4. Legally recognize customary self-government systems and customary judicial administration systems, such as *Barghar/Bhalmansa/Matawa/Jebar* of the Tharu, *Bheja* of the Magar, *Ghampa* of the Thakali, and Bhote Indigenous Peoples.
5. Stop immediately criminalization of customary knowledge, skills, technology and livelihood practices.
6. Provide lands to those Indigenous Peoples who had gone through forced eviction and are landless and homeless.
7. Make it mandatory to obtain free, prior and informed consent from Indigenous Peoples in all legal, administrative and development interventions that affects directly or indirectly to Indigenous Peoples, including Indigenous Women.
8. Develop clear policy to redress and take actions against past and present violations of human rights of Indigenous Women by National Parks and Protected Areas.
9. Recognize legal personality of Indigenous Women.
10. Keep or pull out Nepal Army be obtaining consent from concerned Indigenous Peoples.

Recommendations to the Ministry of Forests and Environment

11. Change and/or amend existing regulations on National Parks,



Wildlife and Hunting Reserves, Buffer Zone and Conservation Areas and other relevant laws and regulations including *Bhutatha Jaladhar Samrakshan Ain*, 2039, *Ban Ain*, 2049, *Batabaran Samrakshan Ain*, 2030, *Ban Niayamabali*, 2051, *Batabaran Samrakshan Niyamabali*, 2054, and *Ozone Tahalai Nasta Garne Padarthako Upabhog Niyamabali*, 2064 making these fully compatible with Nepal's Commitment to international laws, especially the UNDRIP and ILO Convention No 169.

12. Establish a Mechanism for obtaining Free, Prior and Informed consent (FPIC) in line with the UNDRIP in all National Parks, Wildlife reserve, Hunting Reserve, and Conservation Areas.
13. Recognize customary self-government systems and customary judicial administration systems, such as *Barghar/Bhalmansa/Matawa/Jebar* of the Tharu, *Bheja* of the Magar, *Ghampa* of the Thakali and Bhote, of the Indigenous Peoples.
14. Protect and promote customary economic activities and help to build Indigenous economic hub as recommended by NIWF and UNDP (2018).
15. Establish a Mechanism to stop violation of Indigenous Women's human rights, and also stop violence against Indigenous Women by the officials and army of National Parks, Wildlife Reserve, Hunting Reserve and Conservation Areas.
16. Carry out immediate independent investigations of violations of human rights by army personnel in the National Parks and Conservation Areas and give due justice, including compensation.
17. Until collective ownership, control, access, use and management of National Parks and Conservation Areas by the concerned right holder Indigenous Peoples, allow unrestricted access to customary use of natural resources to concerned right holder Indigenous Peoples.

18. Recognize compatibility of rights of way of animals and Indigenous Peoples.

Recommendations to the Nepal Army

19. Start dialogues with the government, specially the cabinet, to pull out from the National Parks and Conservation Areas.
20. Establish a mechanism, and provide regular orientation to army personnel on the rights of Indigenous Peoples and Indigenous Women, to stop torture, sexual abuses, harassments and corporal punishment to Indigenous Peoples, including Indigenous Women.
21. Establish a mechanism to carry out immediate independent investigations of violations of human rights by army personnel, as and when the incidence happens, in the National Parks and Conservation Areas and give due justice, including compensation.

Recommendations to Bardiya National Park (BNP), Dhorpatan Hunting Reserve (DPHR) and Koshi Tappu Wildlife Reserve (KTWLR)

22. Until new laws and policies are passed, accept the rights of Indigenous Peoples, in good faith, to access, collect and use natural resources, not just for three to four days a year, but 365 days a year.
23. Stop criminalization of customary practices of Indigenous Peoples.
24. Stop all forms of intimidation, violence against Indigenous Women;
25. No plans, programs, activities, including establishment of buffer zone at the DPHR, without obtaining FPIC from Indigenous Peoples.



26. Recognize the rights of Indigenous Peoples to natural resources, and stop permitting to use natural resources to private business company.

Recommendations to the Constitutional Commissions, including National Human Rights commission, Indigenous Nationalities Commission, Tharu Commission, National Women's Commission and National Foundation for Development of Indigenous Nationalities

27. Carry out regular monitoring and periodic evaluation of violation of human rights by the National Parks and Conservation and make its reports public
28. Carry out independent investigations of violations of human rights by army personnel in the National Parks and Conservation Areas and give due justice, including compensation.
29. Review exiting laws, policies and regulations that are against the UNDRIP, ILO Convention No. 169 and ICERD and make recommendations to the government.

Recommendations to Indigenous Women's Organization

30. Develop FPIC Protocol relating to National Parks, and Conservation Areas.
31. Lobby to change existing policies, laws and regulations to make it meaningfully compatible with ILO Convention No. 169 and UNDRIP.
32. To engage in regular dialogue with the officials, including army officers, of national parks and protected areas to stop violation of human rights and fully respect the rights of Indigenous Peoples enshrined in UNDRIP and ILO Convention No. 169.
33. Organize awareness raising programs at community levels to get organized and fight for their rights.

Recommendations to International Development Partners, specially the World Wide Fund for Nature (WWF), supporting National Parks and Conservation Areas

34. Ensure WWF Statement of Principles about "Rights and Interests of Indigenous Peoples" as a part of the conditionality of support to the government of Nepal and state it explicitly in the Memorandum of Agreement between the Nepal government and WWF.
35. Support the government, including the Department of national Parks and Wildlife Conservation to meaningfully implement the UNDRIP and ILO Convention No. 169 in its laws, policies, plans and programs.
36. Develop Indigenous Women's policies and rights in line with the UNDRIP, ILO Convention No. 169, ICERD, and CEDAW's Recommendations to Nepal relating to Indigenous Women.

Recommendations to the International Community

37. Provide technical and financial support to carry out fact findings, case studies, and research on violations of Indigenous Women's human rights by National Parks, Wildlife Reserves, Hunting Ground, Conservation Areas, Buffer Zones, and Security, including Nepal Army.
38. Provide technical and financial support to produce Indigenous Women Human Rights Defenders in communities that are directly affected by National Parks, Wildlife Reserves, Hunting Ground, Conservation Areas, Buffer Zones, and Security, including Nepal Army.
39. Provide technical and financial support to regularly document and publish monthly updates, annual reports and during preparation of shadow report on Nepal government's periodic reports submitted to the UN Treaty Bodies by the National



Indigenous Women's Federation, its member organizations and other Indigenous Women's Organizations.

40. Provide technical and financial support to National Indigenous Women's Federation to carry out regular awareness raising programs in affected communities, National Park and conservation officials, and periodic dialogues with officials of National Parks, Wildlife Reserves, Hunting Ground, Conservation Areas, Buffer Zones, and Security, including Nepal Army.
41. Provide technical and financial support to organize regular dialogues with the federal, provincial and local government on protection and promotion of Indigenous Women's rights relating to National Parks, Wildlife Reserves, Hunting Ground, Conservation Areas, Buffer Zones, and Security, including Nepal Army.
42. Take initiative to organize a high level international dialogue in Kathmandu, Nepal among the WWF, IUCN, UNDP, ILO, OHCHR, Special Rapporteur on Human Rights and Fundamental Freedom of Indigenous Peoples, United Nations Permanent Forum on Indigenous Peoples' Issues (UNPFII), Nepal Government, National Human Rights Commission of Nepal, National Indigenous Women's federation and other Indigenous Women's Organizations.

THE RESEARCH TEAM

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