

Indigenous Women's Land Rights in the Community Forests:

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Chini Maya Majhi

Chairperson

National Indigenous Women's Federation (NIWF)

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Glossary

<i>Aauciya Pawan</i>	A Tajpuriya festival
<i>Ailani</i>	Public land
<i>Baad</i>	Customary law ("What are forbidden to do") of Meche
<i>Bona (Petani)</i>	Sleeveless dress of Dhimal women
<i>Halkati</i>	A herb for treatment for cold
<i>Gilohi</i>	A herb for treatment for cold
<i>Gramthan/Maharajthan</i>	Pile of soil on a piece of land kept as a sacred place or in a temple of Dhimal, Gangai, Rajbanshi and Tajpuria
<i>Thakur</i>	A kind of temple Gangai, of Rajbanshi,

	<i>Tajpuria</i>
	<i>Gurgusai</i> Name of Rajbanshi god
<i>Haraloda</i>	A kind of vine for coloring thread
<i>Hile Parba</i>	Mud festival of Tajpuria
<i>HukkaHukki</i>	A festival Ganesh, Gangai Koch, and Tajpuriya
<i>Jattri</i>	A Dhimal festival
<i>Jattri Pawan</i>	A Tajpuriya festival
<i>Kul Devata Puja</i>	Ancestor worship
<i>Kusum</i>	A kind of wild fruit
<i>Lokato</i>	A kind of wild fruit
<i>Majhi Warang</i>	Customary Self-Governing Institution and Chief of Dhimal
<i>Mejambi</i>	A kind of wild fruit for coloring thread
<i>Pipla</i>	A herb for treatment of cough
<i>Majhihadam</i>	Customary Chief of Santhal
<i>Pargaya</i>	Customary Chief of Urau,
<i>Soloi</i>	Special kind of plant found in the forest which is used for colouring Bona (for black colour)
<i>Sirijat</i>	A Dhimal festival
<i>Thakur Kaiwani</i>	Name of Rajbanshi god

Abbreviations

BZCF	Buffer Zone Community Forestry
CEDAW	Committee on Elimination of Discrimination Against Women
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
CF	Community Forest
CFM	Collaborative Forest Management

CFUG	Community Forest User's Group
EC	Executive Committee
FECOFUN	Federation of Community Forestry Users Nepal
FGD	Focus Group Discussion
FPIC	Free, Prior and Informed Consent
ILO	International Labour Organisation
KII	Key Informants Interview
LHF	Leasehold Forest
n.d.	Not dated
NIWF	National Indigenous Women's Federation
PAF	Poverty Alleviation Fund
PF	Protected Forest
RF	Religious Forest
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

1. Introduction and Methodology

1.1. Introduction

Lands, territories and resources are life line of Indigenous Peoples, including Indigenous Women in Nepal and elsewhere in the world. Since the nationalization of forests in 1957, the Nepal Government has been engaged in land grabbing and aggressive development through the expansion of community based forest management and national parks and protected areas. Nepal has ratified ILO Convention No. 169 and adopted the United Nations Declaration on the rights of Indigenous Peoples (UNDRIP) in 2007. There has been no study examining to what extent policies, laws, regulations, and practices of Community Forests (CFs) or Community Forest User's Group (CFUGs) and national parks and protected areas are in line with these international standards of human rights relating to Indigenous Peoples. To address this, National Indigenous Women's Federation (NIWF), with support from Womankind Worldwide, has decided to carry out a case study of selected CFUGs in Jhapa and Morang to understand the extent to which Indigenous Women are exercising their land rights in CFs, document Indigenous Women's experiences of exclusion and the impacts of CFs.¹

1.2 Background

During the authoritarian Rana regime, that is, before the dawn of democracy in Nepal in 1951, Indigenous People had ownership and control over natural resources, including forests, water and pasture. However, after the nationalization of forests in 1957, Indigenous People not only lost this ownership and control but also access to the forest. Community Forestry (CF) was introduced in Nepal after enactment of the National Forestry

¹ This research compliments another study by NIWF on violations of human rights in national parks, wildlife reserve and Hunting reserve with support from N-Peace/UNDP.

Plan in 1976, in order to reverse continuing deforestation and also to fulfill the basic forest product needs of the community. Subsequently, the Forest Regulations of 1995 allowed Community Forest User's Groups (CFUG) to sell surplus forest products to outsiders and use the money for forest management and community development activities, which by now has become one of the dominant types of forest managements.²

Community Forest (CF) is one of the six different modalities of community based forest management in Nepal. It differs from the other five modalities, i.e. Leasehold Forest (LHF), Collaborative forest management (CFM), Buffer Zone Community Forestry (BZCF), Protected Forest (PF) and Religious Forest (RF), in terms of context, objectives and tenure rights. The added value of CFs from non-Indigenous perspective is that these are ecologically sound, economically viable and socially acceptable, but from Indigenous Peoples' perspectives all these six modalities are also predatory, as they take away ownership and control over the forest, including CFs, which have been a part of their ancestral lands, territories and resources. Pathak and Bohara (2017, p.119) writes, "According to the recent data altogether 38.5% of total forest land of the country, that is 2.3-million-hectare of forest, is being managed by more than 3.8 million households under the broad regime of community based forest management."³ Being the priority program of the Ministry of Forests and Environment, "about 60 percent of the total development budget of the CF program is funded through foreign assistance", especially from DFID, SDC, AusAID,

2 Puspa K. C. Bhandari, Prabin Bhusal, Ganesh Paudel, Chiranjibi P. Upadhyaya and Bir Bahadur Khanal Chhetri (2019) Importance of Community Forestry Funds for Rural Development in Nepal". Resources 2019, 8, 85: pp. 1-3.

3 Community Based Forestry in Nepal: Status, Issues and Lessons Learned Bhoj Raj Pathak, Xie Yi, Radhika Bohara International Journal of Science Vol. 6 March 2017 (03). Pp. 119-129. <http://www.ijsciences.com/pub/issue/2017-03/>



USAID, and GTZ .⁴

The main objective of the CF is to “achieve sustainable management of forest resources by converting accessible national forests into Community Forests in a phase wise manner”. The strategy used to pursue this objective is by “handing over accessible forest areas as Community

Forests to the Forest User Groups for management and utilization of forest resources”.

According to the Department of Forest, there are about 1.45 million households or 35 percent of the population of Nepal who are involved in the community forestry management program. There are 19,361 Community Forestry User Groups (CFUGs) with only 1072 women committee members, and a total of 18,13,478 hectares of National forest have been handed over as community forests with 24,61,549 households said to have been benefited.⁵ Although CF users are both Indigenous Peoples and Non-Indigenous Peoples, forests in Nepal exist in Indigenous Peoples' ancestral lands, and the CF Division of the government provides no caste ethnic and gender disaggregated data of CFUGs and its leaders. The seven impacts of CFs stated by the CF Division are: (i) Restored degraded forest land, (ii) Resumed greenery, (iii) Increased Biodiversity, (iv) Increased supply of forest products, (v) Empowered women, poor and the disadvantaged group, (vi) Promoted income generation and community development activities, and (vii) Improved Livelihood.⁶

According to the Deputy Director General and Chief of Community Forest Division "Many international development

4 http://dof.gov.np/dof_community_forest_division/community_forestry_dof

5 http://dof.gov.np/dof_community_forest_division/community_forestry_dof

6 http://dof.gov.np/dof_community_forest_division/community_forestry_dof

partners are involved in community forestry. Major development partners recently involved include Danida, DFID, SNV, AusAID, SDC, USAID through CARE Nepal. Other donors are also involved through NGO like IUCN, WWF, etc."⁷

1.3. Objectives of the research

The main objective of this research is to find out to what extent Indigenous Women are exercising land rights in Community Forests with a focus on enhancing the evidence base and strengthening the case for an inclusive Community Forest management processes for Indigenous Women's land rights. The specific objectives of this study are to review national level policies related to CFs to understand their compatibility with international standards of human rights relating to Indigenous Peoples and to document Indigenous Women's experiences of exclusion and the impacts of community forests for Indigenous Women and their land rights.

1.4. Methodology

The methodology used for collection of evidence, data and information were:

1.1.1. *Desk review of relevant national level policies:*

Review of the main national level policies were carried out to expand upon the research piece evidencing the exclusion of Indigenous Women from Community Forest planning and management or to identify gaps and areas where Indigenous Peoples and Indigenous Women are excluded in the policy. This included the following policies:

- Guidelines for Community Forestry Development Program, 2009
- Forest Act, 2049 (1993)
- Forest Sector Policy, 2000

7 Kanel, Keshav Raj (n.d.) Community Forestry in Nepal. Thailand: Regional Community Forestry Training Center for Asia and the Pacific.

<http://nepalpolicy.net.com/images/documents/forest/research/Current%20Status%20of%20CF%20in%20Nepal.pdf>

1.1.2. Focus Group Discussions with selected Indigenous Women in Morang and Jhapa identifying experiences of exclusion and inequity in Community Forest management

Field work was carried out in Jhapa and Morang districts from February 15 to 23, 2020. Focus Group Discussions (FGD) and Key Informant Interviews (KII) were carried out by the researcher in Jhapa and Morang. The NIWF, in close consultation with leaders of local member organizations and NIWF-DCCs, had identified the following 7 CFUGs, 2 Collaborative Forest and one leasehold forest to carry out FGDs and KIIs. One FGD was carried out in each of these sample CFUGs, Collaborative Forest and a community without forest, and separate FGD was carried out with Mudawari and Urau in the same CFUG, i.e. Singh Devi Community Forest Users Group (Table 1). Altogether 227 participants, including 166 female and 61 male participants participated in the FGDs (Table 1).

Table 1. Sample Community Forest User's Groups and number of female and male participants

S. N.	District	Indigenous Women	Name of the Community Forest User's Group (CFUG)/ Collaborative Forest	Number of FGD Participants		
				Female	Male	Total
1	Jhapa					
1.1.		Rajbanshi	Pathivara Community Forest User's Groups, Tara Wana, Kachana Kawal , Jalthal, Jhapa	18	9	27

1.2.		Meche	Chouki Biram Community Forest User's group, Haldibari 3, Jhapa	19	1	20
1.3.		Dhimal	Hanse Dumse Community Forest User's Group, Doghare Tole Samitti, Haldibari, Damak 4, Jhapa	13	7	20
1.4.		Gangai	Raniban Community Forest User's Group, Phulgachi Gaupalika- 3 Jhapa	15	5	20
1.5.		Tajpuriya	No Forest, Lakhanpur-4 Jhapa	14	4	18
2	Morang					
2.1.		Dhimal	Sun Jodha Community Forest User's Group, Urlabari-3 Tinghare, Morang	10	10	20
2.2.		Rajbansi	Sirjana Community Forest User's Group, Belbari-8, Saitan tole, Morang	22	0	22
2.3.		Urau	Singha Devi Community Forest User's Group, Bhatibauni, Belbari 7, Morang	16	7	23
2.4.		Mudawari	Singh Devi Community Forest User's Group. Belbari 8, Radhanagar, Morang	13	8	21



2.5.		Gangai	Lohandra Collaborative Forest Management Group, Sundarharaicha-10, Horseni, Morang	16	7	
2.6.		Tajpuria	Pathari Sanischare Collaborative Forest Management Groups, Urlabari -3, Dianiya, Morang	10	3	13
	Total			166	61	227

Focus Group Discussions with IPs Women leaders and members of those selected CFUGs in Jhapa and Morang were organized to identify their experiences of exclusion and inequity in membership, leadership, decision making, planning, management of CFs and the impacts on Indigenous Women’s livelihoods and cultural practices relating to lands and resources.

Some key informants were identified during the FGDs and some were identified in consultation with the leaders and members of the CFUGs. Altogether 8 Key Informant Interviews (KKI) were conducted.

As the check list was long, and in many cases the situation, practices and experiences were the same, FGD discussions were focused on issues that the participants thought were most relevant. So, in limited time, collection of information on each issue from all FGDs was not possible.

During data processing and draft write up of the report, COVID-19 pandemic erupted and the government imposed lock down. Hence, it seriously affected the research work that caused delay in its completion.

2. Community Forest (CF) Policy Review

Researchers carried out a desk review and consultations with the concerned government officials on the national level policy of CF to expand the research piece, evidencing the exclusion of Indigenous Women from Community Forest planning and management and to identify gaps and areas where Indigenous Peoples and Indigenous Women are excluded in the policy.

2.1. Review of the Guidelines for Community Forestry Development Program, 2009⁸

As the CFs are run and managed primarily by the Guidelines for Community Forestry Development Program, 2009, these Guidelines were reviewed to understand to what extent Indigenous Women are included in the management of CFs and also whether there is any policy provision that excludes Indigenous Women in making decisions at different levels of CFs. The review highlighted the following:

2.1.1. *The Glossary excludes “Indigenous Peoples” who are the custodians of the forest and natural resources:* The glossary excludes the term “Indigenous Peoples”, who are custodians of forests of their ancestral lands since time immemorial. It clearly shows that Indigenous Peoples are simply a footnote in the texts of “community forests” and of the Guidelines for Community Forestry Development Program, 2009. It appears that Indigenous Peoples are included in other terms such as “Poor class”, “Traditional user” and “Deprived class”. The “Poor class” is defined as those “who are left behind in access

8 *Ban Bibhag (2071) Samudaiyik Ban Bikas Karyakramko Margadarshan. Babarmahal, Kathmandu: Samudayik Ban Mahasakha, Ban Bibhag, Ban tatha Bhusamrachyan Mantralaya, Nepal Sarkar. http://dof.gov.np/image/data/forest_act/samudayik%20ban%20bikash%20magadarshan.pdf*



to and control over economic, social, physical, human and natural resources". "Deprived class" is defined as those "users who have not been included in development works or those who have no or less access to resources". "Traditional user" is defined as "community who are using a certain forest area in accordance to local norms and values, culture, and tradition since time immemorial". In this definition, it appears to refer to Indigenous Peoples but it includes both indigenous peoples and Hindu caste groups. The use of the terms "Livelihood" and "Forest management" are also problematic. "Livelihood" is defined as those "activities related to enhancement of individual capacity, access to resources and employment or business". Livelihood defined by putting individuals at the center clearly excludes the collective as Indigenous Peoples' livelihoods fully depend on collective ownership of lands, territories and resources and Indigenous knowledge, skills, technology and practices.

2.1.2. Recognition of ILO Convention No. 169 but failure to internalize and implement it, and also failure to recognize the UNDRIP: In the Introduction to the Guidelines, it is stated that one of the objectives of the second revision of the Guidelines is to implement the provision of ILO Convention no. 169 that has been ratified by Nepal.

"Similarly, incorporating the recommendations and commitments made by the fifth Community Forest National Conference held in 2065, in order to ensure active participation and the rights of poor, Dalit, Indigenous, Nationalities, Madhesi, women, backward, left behind and traditional forest users on community forest resources and to implement provisions of the ILO Convention No. 169 that was already ratified by Nepal, this Guidelines for Community Forest Development Program

(Second amendment) 2065 has been prepared with wider consultation and interaction with all stakeholders from local level to the central level.”⁹ (Translation from Khas Nepal to English by the Researcher).

Such a determination and commitment made by the fifth Community Forest National Conference to implement provisions of the ILO Convention no. 169 is highly positive. However, the second revised Guidelines, which are now in force, are not in line with ILO Convention No. 169 relating to ownership, control, management and use of Indigenous Peoples' lands and resources, and meaningful representation. Article 14(1) of the convention states, "The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. 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." Further, Article 14(2) states, "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." Also, Article 15(1) states, "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

9 *Ban Bibhag (2071) Samudaiyik Ban Bikas Karyakramko Margadarshan. Babarmahal, Kathmandu: Samudayik Ban Mahasakha, Ban Bibhag, Ban tatha Bhusamrachyan Mantralaya, Nepal Sarkar. Page 2. http://dof.gov.np/image/data/forest_act/samudayik%20ban%20bikash%20magadarshan.pdf*



resources."

Further, there is no mention of the UNDRIP in the guidelines. Neither the Federation of Community Forest User's Group, Nepal (FECOFUN)-an umbrella organization of all CFUGs nor the Ministry of Forest has done a review of this guideline to check its compatibility with ILO Convention no. 169.

2.1.3. No provisions for representation and meaningful participation of Indigenous Peoples in formulating policies and the guidelines: Indigenous peoples, Indigenous Women and their representative organizations, including the National Indigenous Women's Federation (NIWF), Nepal did not have any representation or participation in the decision making on policies and the previous and the current guidelines of community forestry development program. This is also the case in all the five national conferences of community forest, the Forest Act, and the Forest Regulation mentioned in the introduction of the Guidelines. However, in page 2 of the Guidelines, it is claimed that the second amendment of the Guidelines was done in order to ensure active participation, and that the rights of users, including Indigenous, Nationalities and women and for an effective implementation of provisions of the ILO Convention no. 169. It also claimed that these second Guidelines were prepared after "wider consultations and interactions with all stakeholders" at the field from local to central levels, yet none of the Indigenous Women's rights are included in it. What is problematic in the guidelines is that Indigenous Peoples, including Indigenous Women, are treated as one of the "stakeholders", but they are the right holders of their ancestral lands, territories and resources, as per UNDRIP and ILO Convention No. 169, which they are not aware of.

Though it is stated in the guidelines that they are committed

to implement provisions of ILO Convention no. 169, no Free, Prior and Informed Consent (FPIC) on the Guidelines was obtained from Indigenous Peoples, nor was there meaningful representation and participation of Indigenous Peoples in the whole process of formulating the Guidelines in line with ILO Convention no. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP is not mentioned in the Guideline as though it does not exist and is not the obligation of the State to implement it. The Guidelines as a whole is not in line with ILO Convention no. 169 and the UNDRIP. It is indeed positive to have a commitment for effective implementation of provisions of ILO Convention no. 169, but unfortunately this commitment is not apparent in the content of the 66 pages long Guidelines.

It is positive, although inadequate, that the Guidelines require proportional representation of poor, women, Dalit, Indigenous Peoples with at least 50% of women in the User's group. This, however, fails to mention that there should be 50% of Indigenous Women among Indigenous Peoples, and proportional representation of Indigenous Women, Dalit Women, Madhesi Women and Muslim Women among the women.

2.1.4. Policy on Identification and Empowerment is not in line with ILO Convention No. 169 and the UNDRIP: Chapter 2 of the Guidelines is about identification and empowerment. This involves forming a support committee with representation of various categories of people, including Indigenous, Nationalities and women, and dividing their responsibilities. This committee identify users on the basis of households who have traditional use, who rely on the forest, and who can contribute to the protection and management of forests. Also, the committee will identify the forest that they have been using



traditionally and that they can protect and manage. The content of empowerment includes CF's contribution to various groups, including Indigenous, Nationalities and women in making their livelihoods. The guidelines have listed materials that could be used in the process of empowerment as the Forest Act, Forest Master Plan, the Guidelines, Gender and Social Inclusion Strategy in the Forest Sector, but it failed to include ILO Convention no. 169 and the UNDRIP in the list. As a result, the Policy on Identification and Empowerment is not in line with ILO Convention No. 169 and the UNDRIP.

2.1.5. Indigenous Peoples as Users, not Right Holders

: In several places of the guidelines, Indigenous Peoples are mentioned as one of the users, like other users, namely poor, Dalit, Madhesi, and women. This means the Guideline fails to treat Indigenous Peoples as rights holders. In the Chapter 3, the Guidelines requires that each of the CFUGs should prepare their draft constitution with discussion and coordination with various groups, including Indigenous, Nationalities, and traditional organizations of Indigenous Nationalities, and women. It should also be passed by the Annual General Meeting, which must ensure representation of various groups including Indigenous, Nationalities, and women and must comprise at least 50 percent of women. The Chair or Vice Chair should be appointed as a woman. What is problematic with the use of the term “user’s group” is that it denies Indigenous Peoples as custodians of forests and other natural resources, and their collective rights to it that have been handed down from generation to generation. These collective rights mean Indigenous Peoples, including Indigenous Women are the rights holders of lands, territories and resources of their ancestral lands. The constitution, laws, policies, rules and regulations, and guidelines do not treat Indigenous Peoples as the right holders; instead they use

multiple terms, including “user’s group”, “local people”, “local community”, “poor people”, “disadvantaged group”, “excluded group”, and “minority group” that refers to both indigenous and non-Indigenous Peoples. This results in the dominant caste group making all decisions and enjoying all the benefits. This is made possible through their connection with power holders, including political party leaders, civil servants, and security forces and Indigenous Women’s lack of access to education on and awareness of their rights . During the field work, some KIIs and participants of the FGDs suggested that the guidelines must be amended to recognize Indigenous Peoples as Indigenous Peoples and as the rights holders.

2.1.6. *Community Forest Action Plan is not in line with ILO convention No. 169 and the UNDRIP*: Chapter 4 on the Action Plan outlines that the Annual General Meeting is required to prepare a Community Forest Action Plan based on community level discussions on the information collected about demands, supply, forest resources, socio-economic conditions and environmental situation, through participatory resource mapping, participatory forest resource observation, and data analysis. It requires that the plan should get approval of the forest officer and be approved at the AGM. During the field work, FGD participants said that Indigenous Peoples and Indigenous Women have no meaningful participation and representation in decision making on the Community Forest Action Plan, as it is within the limit of the policies and laws that they did not formulate, though Indigenous Peoples form an overwhelming majority in the Community Forest User Group. However, in mixed communities where Indigenous Peoples are less in number, non-Indigenous Peoples have greater participation and representation in decision making of the plan to the active exclusion of Indigenous Peoples. In those Indigenous Peoples



predominant CFs, e.g. Sun Jhora CFUG, Dhimal Women's representation and participation were high, but; they have no right to make any decision such as continuation of customary practices relating to forest use and products, as the non-Indigenous men who hold Chair and other key positions make the actual decisions. This is not in line with the provisions of the ILO Convention No. 169 and the UNDRIP relating to ownership and control over lands, territories and resources by Indigenous Peoples, customary self-government systems, and meaningful participation and representation of Indigenous Peoples in making decisions. Further UNDRIP requires that CFUGs should obtain FPIC from Indigenous Peoples.

Also, there is no provision for direct representation of Indigenous Women through their own representative organization and selection process. In fact, the CF and other forests were designed and implemented to deny collective rights of Indigenous Peoples on their lands, territories and resources. The CF and its action plan are detrimental to the forest management practices of customary institutions such as *Majhi Warang* of Dhimal in Jhapa, as it takes away their customary rights of ownership, of control over and use and management of their forest. During FGDs and KIIs all Indigenous Women said that they are not familiar with it and neither CFUG's and FECOFUN nor Indigenous Peoples' organizations have provided orientation or training about their rights.

2.1.7. Formulation of Special programs for Indigenous Peoples: What is positive about the guidelines is that it mentions the formulation of special programs for Indigenous Peoples, women and others. However, there is a conspicuous lack of specific programs and activities with focus on Indigenous Women's rights across all the CFUG's studied.

2.1.8. Implementation of the Forest Action Plan is not in line with ILO Convention No. 169 and the UNDRIP : In Chapter 5, the Guidelines have stated a number of indicators for implementation of forest action plan that are **not in line with ILO Convention No. 169 and the UNDRIP**. The first indicator is strengthening good governance, such as annual public hearing and public audit, meaningful participation of Indigenous, *Jajajati* ("Nationalities"), women and other groups in decision making and building their leadership with affirmative action, and monitoring and assessment. Other indicators are focused on livelihoods for poor, sustainable forest management, entrepreneurship development based on forest, coordination with other bodies and human and institutional development, networking and self-evaluation. However, meaningful participation of Indigenous Women in CFUGs is still an elusive dream.

2.1.9. Concept and creation of CFs is not in line with the UNDRIP and ILO Convention No.169

According to the Article 26 of the UNDRIP, (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”, and (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.” ILO Convention no. 169 has these same provisions relating to lands, territories and



resources. However, CFs actually are completely in opposition to these rights of Indigenous Peoples, as CFs take away rights to own, develop and control the lands, territories and resources.

In brief, the implementation of the Guidelines is not in line with the UNDRIP and ILO Convention No. 169. According to the Article 27 of the UNDRIP, “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.” In practice, Indigenous Women’s customary laws, traditions, practices pertaining to lands, territories and resources are completely ignored by all CFUGs.

2.2. Further Tasks in Reforming the Community Forestry Implementation Guidelines¹⁰

Because of the changing context and the experience gained by the Community Forest User Groups, stakeholders have felt a need to revise the current community forestry implementation guidelines. Similarly, the income of CFs is spent on different activities, especially community development such as road, school, temple construction, irrigation where the poorer groups of the society do not get much direct benefits. Hence, the revision of the Guidelines is felt to be of very urgent need for the proper utilization of the community forestry funds. Therefore, the Community Forestry Division of the Department of Forests

10 <http://nepalpolicy.net/images/documents/forest/research/Current%20Status%20of%20CF%20in%20Nepal.pdf>

is drafting the revision of the guidelines in consultation with all stakeholders. Some of the key informants said that these reformed guidelines are not in line with the UNDRIP and ILO Convention No 169 and these instruments are not being considered during its deliberation.

2.3. Forest Act 1993¹¹

Policy review of the Forest Act, 1993 is also equally important as the Community Forest is guided by this Act. There is a separate Chapter-5 with Articles 25 to 30 on Provisions Relating to the Community Forest. The Forest Act 1993 fails to recognize and undermines the rights of Indigenous Woman and Peoples in several ways.

- The Forest Act has provision that the District Forest Officer (DFO) may hand over any part of national forests to the communities, who are traditional users of the resources. Article 25 of the Act states, “(1) The District Forest Officer may handover any part of a National Forest to a Users' Group in the form of a Community Forest, as prescribed entitling the CF to develop, conserve, use and manage the Forest and sell and distribute the Forest Products independently by fixing their prices according to Work Plan. While so handing over a Community Forest, the District Forest Officer shall issue a certificate of alienation of the Community Forest”, and (2) The District Forest Officer may constitute a Users' Group as prescribed by mobilizing users and provide technical and other assistance required to prepare the Work Plan for the purpose of Sub-section (1).”

11 **FOREST ACT 2049 (1993)** (OFFICIAL TRANSLATION)

Translated by: Law Books Management Board/HMGN May 22, 1995

Produced by: Ministry of Forest and Soil Conservation Forestry Development
Project HMGN/USAID file:///C:/Users/Avilekh/Downloads/Forest%20Act_Eng.pdf

This Article fails to recognize Indigenous Peoples as distinct peoples and as right holders. Instead they are subsumed within a blanket term “traditional users of the resources” implying that all the community members, be they Indigenous Peoples or not, are the users and they have user’s rights only in line with the Act. and. Article 27 on Community Forest outlines that these user rights could be taken away by the Government at any time. It states “In case the Users' Group cannot operate its functions in accordance with the work plan in the Community Forest handed over pursuant to Section 25 or operates any functions which may cause significant adverse effect in the environment or does not comply with the terms and conditions to be complied pursuant to this Act or the Rules framed thereunder, the District Forest Officer, may decide to cancel the registration of such Users' Group and take back such Community Forest as prescribed.”

According to the Act, land ownership of the community forests remains with the state, while the rights to use land belongs to the CFUGs, and each household is recognized as a unit for the membership and every member has equal rights over the resources. It should be noted here that the Indigenous Peoples had never given their ancestral lands to the State; instead the State has taken it over by using the theory of Terra Nullius, Regalian doctrine in the past and by using the theory of Eminent Domain at present. The state considered Indigenous peoples' lands as *Teraa Nulius*, i.e. empty lands, because they do not have any written documents that would show their ownership. Regalian doctrine considers lands are of the Crown and Crown has a sole right to use and distribute it on their wish. Eminent domain means government has a sovereign power over all lands within its jurisdiction and so it has rights to take private

property, such as private land, to public use often by paying compensation. On the other, Indigenous Peoples also have collective rights on lands, territories and resources. So, limiting their collective ownership, control, access, use and management of forests to only user's rights is a violation of UNDRIP and ILO Convention no. 169. Article 14 of the ILO Convention No. 169, states, (1) “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”, and (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.” Further, the Act is not compatible with Article 15 of the ILO Convention No. 169 which states, “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.”

Similarly, the provision of the Forest Act, 1993 is not in line with the UNDRIP. According to Article 26 of the UNDRIP, (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”, and (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.”

2.4. Forest Sector Policy 2000 ¹²

Initially, the focus of the community forestry program was on conservation. Gradually, its focus shifted to community empowerment and institution building for forest management and community development. The Forest Sector Policy of 2000 reverted back to the conservation issue of forest management through government domination. The policy exclusively mentioned as below:

According to a section on the New concept of forest management of Terai, Churia and Inner Terai, “The barren and isolated forestlands of the Terai, inner Terai and the Churia hills will be made available for handing over as community forests. A community forest operational plan will be prepared and forest products will be utilized based on annual increment and prescribed guidelines relating to the marketing of forest products.” (MoFSC 2000)¹³

As the main objective of community forests is to fulfill the basic needs of local communities for fuelwood, fodder, and small timber, when surplus timber is sold by CFUGs, 40% of the earnings from the sale of surplus timber in the Terai, Siwaliks and Inner Terai will be collected by the government for program implementation.”¹⁴

Community forests is one of six classification of forests, which is "A part of national forest which are handed over to users"

12 <http://extwprlegs1.fao.org/docs/pdf/nep150857.pdf>

13 MoFSC (2000) **Forestry Sector Policy 2000**, Kathmandu: Ministry of Forests and Soil Conservation (MoFSC), His Majesty's Government of Nepal. Page 12.

14 Ibid

groups as community forests to conserve, manage and utilize for their basic local needs."¹⁵

These provisions go against the provisions of the UNDRIP and ILO Convention No. 169 that ensure ownership and control over and access to and use of lands, territories and resources by Indigenous Peoples.

2.5. Federation of Community Forestry Users Nepal (FECOFUN) Policy Briefs

Federation of community Forestry Users Nepal (FECOFUN) is a formal network of more than 22,266 Forest User Groups (FUGs) and other community based forest management groups from all over Nepal. FECOFUN have produced two Policy Briefs with support from USAID. The first on Women's Rights in Community Forest¹⁶, focuses on women's constitutional and legal rights such as proportional inclusive representation, positive discrimination, and equal property rights on parental property, access to forest resources, awareness raising, and campaign against existing violence against women in forest sector.–This policy brief is problematic because Indigenous Women and their rights as Indigenous Peoples are not being explicitly recognized and stated.

The second Policy Brief on Coordination and Joint Work between Local Government and Community Forest¹⁷, covers constitutional and legal policies with focus on constitutional division of rights and scope of local, provincial and federal government's common and individual rights, CFUG's autonomy, priority and rights, interrelation between them,

15 Ibid. Page 18.

16 <http://fecofun.org.np/downloads/Policy-Brief-Women-Rights-in-CF-Final-from-Press-21-June.pdf>

17 <http://fecofun.org.np/downloads/Coordination-and-Interrelation-between-Local-Government-Community-Forestry-23-Apr.pdf>



possible institutional structure, annual work plan and budgeting, tourism, benefit sharing, and justice. Although inclusion is used in a few places, there is no explicit mention of Indigenous Peoples, Indigenous Women and their rights ensured by the UNDRIP and the ILO Convention No. 169. Both local bodies and CFUGs damage customary self-government systems of Indigenous Peoples. The CFs that are in the ancestral lands of Indigenous Peoples should be collectively owned by Indigenous Peoples and managed through their customary self-government systems.

In brief, the policy review revealed that government laws, policies and guidelines on CF and CFUGs grab lands, territories and resources of Indigenous Peoples, rights of Indigenous Peoples enshrined in ILO Convention No. 169 and UNDRIP. There is a conspicuous lack of policies on Indigenous Peoples that ensures their rights enshrined in UNDRIP and ILO Convention no. 169. Indigenous Peoples, including Indigenous Women. Treating Indigenous Women as users or stakeholder but not as right holders have deprived them from enjoyment of their rights.

3. Exclusion of Indigenous Women by Community Forest User's Groups

This section covers experiences of exclusion and inequity by Indigenous Women in the ownership of CFs, and their representation and participation in membership, leadership, management, formulation of five-year/three-year/annual plan, and Indigenous identity. The findings of this study are as follows:

3.1. Experiences Relating to Ownership of CFs

Community forests are owned and regulated by the government and government has given its management to CFUGs. Although Article 14 of the ILO Convention no. 169 enshrined Indigenous Peoples' rights to their ancestral lands, the government has not implemented this meaningfully. According to Article 14 (1) and (2) on lands of this convention,

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. 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.



According to Article 15 (1) on natural resources of this convention,

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.

Similarly, according to the UNDRIP, 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 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.

As, Indigenous peoples have lost ownership and control of their lands, territories and resources, they are forced to become members of CFUGs not as right holders but as stakeholder or

local community members, with restricted access to resources from the forest. Despite this, Dhimal Indigenous Women of Sunjhoda CFUG have a sense of ownership of their CF as they are in the majority in the membership. However, in other CFUGs, non-Indigenous Peoples are in majority; so Indigenous Women have no feeling of ownership of their CFs.

3.2. Open membership but low participation of Indigenous Women members

Indigenous Peoples', including Indigenous Women's participation is based on individual rights, not on collective rights. Although membership of CFUGs are open to all community members, including Indigenous Peoples, caste and ethnic groups, membership of Indigenous Peoples differs from one CFUG to another, but in all CFUGs a few Indigenous Women have become members for several reasons. Some of the reasons mentioned by the participants of FGDs are as follows:

- In the Raniban CFUG, everyone can become a member, but until now, Gangai Indigenous Peoples are unable to be members in this CFUG due to lack of awareness and lack of information.
- In the Singh Devi CFUG, a few Mudawari Indigenous Men are its members but not Mudawari Indigenous Women, or Urau Men and Women, because leaders belonging to the dominant caste group treat them inhumanly as untouchables caste groups. Also, some Urau and Mudawari men and women have no citizenship certificates required to be eligible to get government services and therefore they could not join the CFUG.
- Meche FGD participants of Chouki Biram CFUG said that although one male or female from each household are compulsory in their CFUG, there are more male members than females. Meche women earn more money by producing liquor and local beer, so they are not interested

to join the CFUG.

- In Hanse Dumse CFUG, Dhimal Women, members are mainly male, and only one Dalit, and one Yakthung ("Limbu") woman. In this CFUG, of the total 159 members only 2 are Dhimal, and both are males. Men become members as they are the household heads. Dhimal women are not interested to become members of the CFUG because they can earn more money by weaving their traditional dress *Bona* ("Petani").
- Rajbanshi participants of Pathivara CFUG conceded that it has not covered all the Indigenous Peoples of their community because of lack of awareness and information available to Indigenous Peoples. Also, Indigenous women are busy doing their household chores. Generally they may participate if their husbands have gone for foreign employment. In Hanse Dumse CFUG located in the area most numerously populated by Dhimal Indigenous Peoples, membership of Dhimal is high but their representation in the Executive committee (EC) is low, as the main decisions are made by the members belonging to the dominant caste group.

Some FGD participants said that they have some positive perspective towards CFs because the forest is preserved, they get training on forestry, and they are able to collect some logs once a year. However, in all CFUGs, among Indigenous Peoples, compared to Indigenous men, participation of Indigenous Women is very low, mostly due to lack of awareness and information, and increased burden of domestic labour, including household work and taking care of children.

The perspective of Indigenous Women towards CF is not positive due to the restriction in the use of forest products in their customary ways. Now they are limited or bound to obey the rules and regulation of CFUGs. Indigenous Women's only

visible participation in the Annual General Meeting is just to clap for the endorsement of the minutes, but IPs Women do not know what exactly is in the minutes.

Participants of FGDs mentioned some benefits Indigenous Women receive by being members of CFUGs, in the limited instances where they are members. However, the majority of these still come with limitations:

- A Meche FGD participant said, "After giving birth to a baby the CFUG provide 1kg of Ghee ("clarified butter") and one thousand rupees for a mother who is its member. The positive thing is that we can bring some firewood and forest has been protected to some extent."
- A Gangai FGD participant said, "We get 3 quintals of firewood once a year and 15 cubic feet for our house construction. These are not enough to meet our needs."
- A FGD participant said, "The Poverty Alleviation Fund (PAF) distributed 6 stitching machines, 26 wooden beds. Only 10 Santhal and 5 Gangai families were its beneficiaries."
- The participants of the FGD said that meetings are called at 9 a.m., which they do not consider as women friendly time. In the meeting, mostly women do not speak up. If some speak also their views and concerns are completely ignored.
- Some Dhimal CFUG members said that they get some incentives in being a CFUG member. For example, they get 1 cubic feet of log to build houses for which they pay 13 hundred 80 rupees. Also, the Poverty Alleviation Program supported in building 5 houses for 5 members at a cost of rupees one lakh each, and their children and



youth have received health awareness training.

- Some of the FGD participants said that in the annual General Meeting, each of them gets some snacks and Rs. 200 to Rs. 300 in cash. The meetings are called when their children go to school; so the time is good for them. However during the meeting, they are very scared to put forward their views and sometimes they become unable to attend due to too many household tasks.
- FGD participants of the Sirjana CFUG said that sometimes they get training on forestry and they have a positive perspective towards CFUG, because it is taking care of the community people.

In brief, although CFUG membership is open to all, Indigenous Peoples are either not interested in being members of CFUGs dominated by the non-Indigenous Peoples because they are not allowed to use forest in their customary ways, or are unaware about it due to a lack of information.

3.3. Exclusion from participation and decision making in the formulation of plans

CFUGs are required to formulate a 5-year plan, some formulate a 3 year or an annual plan instead, but each CFUG prepares their annual program. In all CFUGs, participants of all FGDs said that the executive committee members do not consult Indigenous Women members while making the plan and program. Further, they do not obtain Free Prior and Informed Consent, and this has never been obtained from Indigenous Peoples related to CFs. This is partly due to a lack of knowledge, as according to FGDs CFUG leaders and members, including Indigenous Women members, do not know what FPIC means.

The executive committees do not give priorities to customary knowledge, skills, technology, practices, rituals, and livelihood

while formulating 5- or 3-year plans and their annual program. These plans and programs are made by those CFUG leaders who are affiliated with political parties. They give information to Indigenous Women about the meeting, but they fail to show their concern about Indigenous Women's needs and rights in the plan and program. Indigenous Women also lack awareness about importance of such meetings for their access to resources controlled by the CFUGs.

Meche Women said that if some of them happen to be present during the time of discussions on the plans and programs, then the executive committee members ask them what to do, but they do not consider their views and suggestions, and Indigenous Women are not given the opportunity to make decisions collectively. Customary laws, practices, skill, knowledge, livelihood are not taken into account because these are not concerns and priorities of the leaders who belong to the dominant caste group.

Some FGD participants said that even if Indigenous Peoples are in decision making positions, their decisions are not implemented. For example, one of the Dhimal FGD participants said, "In the CF plan, there is a hand loom skill development policy but it was never implemented." According to participants, sometimes conflict erupts between Non-Indigenous and Indigenous Women as non-Indigenous Women think that they are superior and Indigenous Women are weak.

In brief, the above information reveals that it is not only Indigenous Women but Indigenous Men are also not consulted and they have no meaningful participation in formulating the CRUG's annual program and three or five year plan. As a result, Indigenous Women's and Indigenous Peoples' rights, issues, concerns, and needs are not addressed in these plans.

3.4. Exclusion in leadership

Leadership is important to give direction to CFUGs and to



inspire members and others to participate actively for the common good. Given continuing domination of so-called "high" caste people everywhere in public positions, it is essential to see whether Indigenous Women are in leadership position or not in CFUGs.

In most of the CFUGs, except a few where Indigenous Peoples are members in majority, Indigenous Women are not involved at the decision making level in most of the CFUGs studied. In Sun Jodha CFUG, Dhimal Women are in decision making level but they cannot make any decision relating to Indigenous Peoples' rights, including ownership or control or use or management of forest resources in their customary ways, and also cannot make any decision relating to meaningful implementation of UNDRIP and ILO Convention no. 169 relating to lands, territories and resources and customary self-government system. They cannot make a decision to obtain FPOC from Dhimal Indigenous Peoples. However, they can, or are encouraged to make decisions that go against Indigenous Women's rights. It means, there are certain criteria for the leadership of CFs but there is discrimination against IPs Women. Non IPs Women are not only insensitive towards IPs Women but also are against IPs rights.

Executive Committee (EC) is the main leading and implementing body of all CFUGs. In most of the CFUGs, EC members, including the Chair, are represented from leaders belonging to dominant caste groups, and in a Few CFUGs, but those Indigenous Women and Men who become Chair or members of CFUGs, they think and act like those who belong to the dominant caste groups, otherwise they would get those positions. During field work, participants of FGDs shared the following information about their exclusion from the CFUG Executive Committees (EC):

- In the Chouki Biram CFUG, of the total 15 EC Members, there are 5 Meche Male Members, including the

Chairperson, but there is no Meche Women member. Hence, Meche women are excluded in the EC. Though the Chairperson is Meche, he has to follow the laws, regulation and guidelines of CFUGs that do not ensure Indigenous Women's rights or participation.

- In the Hanse Dumse CFUG, with 631 hectors of land and the total 159 Members, 23 EC Members include 3 Indigenous Males and 4 Indigenous Women. Of the 3 Indigenous Males, 2 are Dhimal Males, and of the 4 Indigenous Women all are Dhimal. Hence, Dhimal women are excluded in the EC. As Indigenous Members are low in number, they are unable to influence non-Indigenous Members who have more than two thirds of majority in the EC.
- In the Raniban CFUG, of the total 950 CFUG members, there are 13 EC Members, including 3 Gangai Male Members. However, Gangai women are excluded in the EC.
- In the Sun Jodha CFUG, of the total 19 EC Members, 4 Dhimal Males and one other Indigenous Male. Also, it includes 4 Dhimal Women and one Newar Woman.
- In the Singh Devi CFUG, there are 21 EC Members, including 10 Indigenous Peoples Members. Mudawari Women and Men are excluded not only in the EC but also as household members. Both the Chair and the Vice Chair are Tamang Males, and the Secretary is a Rai Woman but they are unable to ensure rights of Indigenous Women as they have to follow the laws, regulations and guidelines of CFs.

Clearly, in all the CFUGs, Indigenous Women are few in leadership positions but they cannot make any decision about Indigenous Peoples' rights enshrined in ILO Convention



no. 169 and UNDRIP. Participants of FGDs mentioned its several reasons, including domination of leaders and members belonging to Bahun-Chetri caste group, and also because of Indigenous Women's inability to give time, lack of awareness, household chores, migration, lack of education.

CFUGs have formed the Federation of Community Forest Users of Nepal (FECOFUN), an influential nationwide umbrella organization of all CFUGs. Hence, it is important to understand the extent to which Indigenous Women are represented in its leadership positions also. The desk study revealed the following:

3.5. Exclusion in management

Participation in management of CFUGs is also important in order to enjoy rights by Indigenous Women. No CFUG gives priority to customary management practices of Indigenous Peoples. There is no meaningful participation of Indigenous Women in CFUGs' management, financial process, implementation, monitoring and evaluation process. There is no reward and punishment system. There is a policy for marginalized groups but none specific to Indigenous Women. FGD participants said that decisions are made by the President, Secretary and distribution committee coordinator who are non-Indigenous Peoples and although Secretary and Office Assistants are Indigenous Women, they are just the bystanders.

3.6. No meaningful recognition of Indigenous identity

Whether CFUGs' recognize Indigenous Women members as CFUG members or Indigenous Women make a difference in recognition of Indigenous Women's rights. In all CFUGs, Indigenous Peoples are known as CFUG members, meaning they are denied their right to carry out customary or traditional cultural and religious practices, including collection of firewood, fodders, wild vegetables, fruits and fish in the CFs.

However, the Damak Municipality has declared Dhimal as a distinct indigenous peoples of Damak in Jhapa. Such recognition is yet to be followed by CFUGs. As an exception, in Chouki Biram CFUG, Some Key Informants explained that Indigenous Identity is recognized in the CFUG, in which the overwhelming majority of its members are Meche Indigenous Peoples and they are in key leadership positions. Meche Indigenous Women are known as Meche and the CFUG allow them to perform their religious worship and rituals, except rituals related to hunting wild animals. They allow Meche women to collect herbs, vegetables, Ghongi, and fishing, but they need to take permission from the CF Committee to do so. The decision is made according to the forest policy. Meche women's livelihood depends on traditional liquor making and selling and it has become their identity. They have special skills of making homemade liquor but require access to the forest for collecting plants that are customarily used to make yeast for fermentation to produce traditional liquors. Production of liquor is primary for their spiritual, religious, social and cultural practices but after taking away of their lands, territories and resources by the government, they have to rely on selling of liquor as their last resort to make their living. But production of customary liquor has been criminalized by the government.



4. Impacts of Community Forests on Indigenous Women's Livelihoods and Cultural Practices

The impacts of CF on Indigenous Women's livelihoods could be better understood by comparing their situation before and after the establishment of CFUGs in their ancestral lands and territories. In all FGDs, the participants share the kind of customary practices they have been engaged in, following what their ancestors used to do, since time immemorial, in using forest products. All of their answers were unanimous, that is before establishment of CFs and CFUGs, they have been practicing traditional use of forest resources but after its establishment this has been fully restricted. Detail of the findings about the impacts on Indigenous Women's livelihood are as follows:

4.1. Impact on collection of customary foods and livelihoods

Indigenous women and men participants of the FGDs said univocally that before establishment the of CFs and CFUGs, Indigenous Women, following their ancestors or customary practices, used to go freely to the forest to collect customary foods, such as wild vegetables like ferns, mushrooms, roots and tubers, and fruits like berries, guava, mango, *jamun*. Also, they used to catch fish, crab and ghongi (snails found in shallow water), and hunt deer, boar, porcupine, rabbit, wild cat etc. (Table 2).

One of the FGD participants said, "When we were children, we used to go to the forest freely to gather fruits and vegetables, collect herbs, and go for fishing and hunting." Many FGD participants said that they still go, though it is now considered illegal, to pick up wild mushrooms and wild ferns, and also some herbs and medicinal plants during sickness and when they

get wounds. The participants of FGDs said that they collect all these foods from the forest for household consumption, not for sale. They never sell these forest products as it is not considered good in their society.

Before establishment of CFUGs, the Rajbanshi community members used to give some grains and paddy to *Patuwari* (the Village Headman) once a year, and if they hunt animals from the forest, they used to offer him the head and legs of that animal. Such customary practices allow limited hunting without affecting the animal or bird population. These activities are no longer possible after establishment of the CFUGs.

Table 2. Collection of wild foods before and after establishment of community forests.

S.N.	Customary Activities by Indigenous Women	Names of Wild foods	Before Establishment of CFUGs	After Establishment of CFUGs
	Collect fruits			
		Berries	Yes	No
		Guava	Yes	No
		Mango	Yes	No
		<i>Jamun</i>	Yes	No
		<i>Kusum</i>	Yes	No
		<i>Lokoto</i>	Yes	No
	Collect wild vegetables			
		Ferns	Yes	Yes but "Illegally"
		Mushrooms	Yes	Yes but "Illegally"

	Collect roots and tubers		Yes	No
	Fishing			
		Fish	Yes	Yes but "Illegally"
		Crab	Yes	Yes but "Illegally"
		Ghongi (paddy field snails)	Yes	Yes but "Illegally"
	Hunting			
		Deer	Yes	No
		Boar	Yes	No
		Rabbit	Yes	No
		Porcupine	Yes	No
		Kosa (Big Lizard)	Yes	No
		Birds	Yes	No

Source: Focus Group Discussions, 2020.

One of the participants said, "For meat, our parents and grandparents used to hunt animals, e.g. deer, rabbit, big lizards, wild boar, porcupine, and birds." Many FGD participants said that they no longer do it as the government has banned hunting wild animals. Some of the participants of FGDs explained that their past customary practices allowed them to hunt animals in sensible ways. It means, they would not kill pregnant or sick or baby animals, and they make sure that the animals would not be wiped out. Similarly, some other participants said that they allow fish to lay eggs and then only they fish, but non-Indigenous Peoples fish any time leading to depletion of fish stocks. So, in the past, they had no problem in making their livelihoods from their forest resources, but now these customary practices are

being criminalized.

In all FGDs, some participants said that they continue to go to forest to collect fire woods, foddors and grass in some CFUGs. Before the establishment of the CFUG, they were able to sell fire woods, logs, grass and fodder, and raise livestock for milk and meat. So, they could make a living by doing so. But now, they can collect fire woods, foddors and grass in a limit for their household consumption only as it is restricted by the CFUGs. Some Rajbanshi Women FGD participants who have no land ownership certificates said, "My family and many others live in *Ailani* (public) land, with no land certificate. We are allowed to gather firewood from the community forest."

Almost all CFUGs have restricted their members, both Indigenous and Non-Indigenous Peoples, from collecting wild vegetables and fruits, and fishing and hunting. Some Dhimal women said that they used to go to forest even illegally to carry out their customary practices of collecting wild foods but now they no more do so because of fear of encounter with wild elephants. Nowadays everyone uses gas stoves; so very few people use firewood for cooking foods. FGD participants said that each household can get 3 quintals of firewood once a year, but it is expensive to bring it home from by hiring a tractor. So, many of them use gas stoves, and some of them buy fire woods. One of the Urau FGD participants said, "Our income from the selling of forest resources has been greatly cut down due to the tight restrictions put on the amount of forest resources we can gather."

One of the Rajbanshi FGD participants said, "Previously we were self-sufficient but now we have become dependent to outside resources to make our living." Being a member of the CFUG, the Poverty Alleviation Fund (PAF) gave funds to



15 households to raise goats, 3 households to raise pigs and 4 households got wooden beds. Almost all the forest products collected by Indigenous Women were mostly used for making their customary livelihood and for household consumption. Some of the participants said with sadness and others with some anger that now-a-days they cannot rely on the forest's resources for their livelihood due to the restrictions of the CFUGs.

4.2. Impact on health

All FGD participants said that they used to collect medicinal plants or herbs such as *Gurjo* vine for blood pressure, *Pipla* for cough and cold, and *Halkati* and *Gilohi* that are used for curing jaundice, diabetes, stomach pain, cleaning blood etc. Now they no more do so. Government health care facilities are in poor condition. Many of the FGD participants said that they cannot afford to go to private clinic or hospitals for medical checkup as they have no money to pay for the costs. Some of their community members still have indigenous knowledge, skills and practices of medicinal plants but they are unable to use it to maintain their health.

4.3. Impact on traditional rituals

All the FGD participants said that their ancestors used to go to the forest for traditional rituals, including worshipping Gods, performing death rituals by burying the dead body in the forest, where their gods, spirits and ancestors live and is sacred for them. But, now, they were unhappy that there are restrictions imposed by the CFUG to carry out their customary social, cultural, religious ritual practices inside the community forests. Many FGD participants said that they are allowed to bury their dead inside the community forest but as CFUGs discourage such activity many of them started to burn the dead body (cremation). Many FGD participants pointed out that

the CFUGs should allow Indigenous Peoples to perform their rituals, culture and customary and religious practices.

The Meche FGD participants said that they perform *Kul Devata Puja* (ancestor worship) at home and do Puja at *Gramthan* (soil on a piece of land kept as a sacred place) in the village, which previously used to be in the forest. During such puja, women need to wrap their scarf on their heads. They need a mango tree and a well in front of their house. Those who worship that mango tree and well during their marriage they do not eat the mango and the water from that well because it is considered sacred. Before establishment of CFUGs, their ancestors had certain rules and regulations to offer certain amounts of grains, paddy, vegetables, fruits, clothes, and shawl to the Head of their community. Now it is not in practice, because they cannot access many of these things from forest due to restrictions imposed by the CFUGs.

Tajpuriya FGD participants said that their ancestors used to worship and practice from time immortal religious rituals in *Gramthan/Maharajthan*. They celebrate festivals such as *Siruwa*, *Hile Parba* ("Mud festival"), *Jattra Pawan* (a festival), and *Aauciya Pawan* (a festival), and *HukkaHukki*. Tajpuriya Indigenous Peoples, including women, are not members of any CFUG. They continue to carry out their traditional practices but with huge limitations as they cannot use forest in their own ancestral lands.

Dhimal participants said that CFUGs has affected their festivals such as *Jattri* and *Sirijat*, which used to be celebrated in the forest but now they are forced to celebrate in the community.

Rajbanshi worship god at the *Gramthan*, *Thakur Kaiwani* and *Gurgusai*. Further, they used to pay *Mana Pathi* (traditional Nepalese measurement units for volume, 1 Mana is 1 Mana(0.56 litre and 1 Pathi=4.5 litre) collectively to the Chief,

but now there is no such process in practice. If they continue to do their traditional activities that go against the CF policies, they get punishment, sometimes in a cash fine.

4.4. Impact on customary crafts

For coloring thread to weave *Bona* ("Petani," sleeveless dress), Dhimal women need a special kind of plant which is called *Mejambi* and *Haraloda* and *Soloi* for coloring threads. Due to CF laws the women are now unable to go to the forest and collect the plant. They tried to plant in their kitchen garden. It grew, but is not healthy as it used to be in the forest. They boil the leaves of *Soloi* and vine of *Mejambi* for coloring the thread. They soak wild fruit *Haralod* in water for coloring white thread. Dhimal women are not permitted to collect these wild fruits and plants from CFs. They, however, collect it "illegally" taking risk of punishment in cash or verbal abuse.

FGD participants of the Sunjhoda CFUG said that they need the skin of a deer to make their traditional *Dhol* ("drum") and *Urni* (musical instrument) to play traditional music. Now they cannot hunt deer so must make it with the skin of an ox or goat. Before establishment of CFUGs, the customary practice of information sharing to community members was by playing such *Dhol*, but now they use mobile phones or in official work through written letters.

4.5. Impact on customary self-government systems

Indigenous Peoples have their own customary self-government systems. During discussion in FGDs, such systems, such as *Majhi Warang* (Self-government Institution and "Chief") of Dhimal, *Majhihadam* (Self-government Institution and "Chief") of Santhal, *Pargaya* (Self-government Institution and "Chief") of Urau and Mudawari, *Baad* ("What are forbidden to do") of Meche are still working. Before nationalization of forest in 1956, there were very few settlers in Jhapa and Morang districts. So,

Indigenous Peoples' customary self-government systems were robust. After nationalization of forest, government encouraged the Hill people, specially Bahun Chetri to migrate and settle in these places. After establishment of protected areas, including CFs, Indigenous Peoples' customary self-government systems started to weaken as many of their roles and responsibilities were taken away by CFs and other protected areas. Some of the examples shared by FGD participants are as follows:

In the Urau ("Jhangad" or 'Dhangad") and Mudawari communities, all their decisions and rules were made by the Chief *Pargay*. If any event was about to happen then the information was disseminated through a person assigned with that specific task by *Pargaya*. The representative of the community was selected by the Chief with advice and suggestions from the people of the community. One of the Urau FGD participants said, "We lost freedom that we had over our lands; now it has been reduced and is controlled by the strict policies of the CFUG."

In brief, these findings reveal that all Indigenous Women, Indigenous Peoples used to enjoy free, customary use of forest to make their subsistence living by collecting wild vegetables, fruits, and herbs and also by hunting and fishing. They used to carry out these activities under their customary self-government systems. These customary practices are now criminalized by the forest laws, conservation laws and CFUGs. Their stories and experiences are almost the same everywhere. In those CFUGs where Indigenous Peoples are in the majority, they have some leverage in access to forest to carry out some of their customary practices, but in those communities where non-Indigenous Peoples are dominant, Indigenous Peoples are criminalized to perform any of their customary practices in the forest.



5. Recommendations

Based on the desk policy review and empirical findings, the following recommendations are made to both the Ministry of Forest, FECOFUN, and Indigenous Peoples Customary organizations to ensure Indigenous Women's rights:

5.1. Recommendations to the Government

1. The commitment to implement the ILO Convention No 169 in the Guidelines for Community Forestry Development Program, 2009 should be duly implemented meaningfully. Nepal has been a party to this convention since 2007. Also, it is the obligation of Nepal to meaningfully implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by Nepal in 2007 together with the ILO Convention No. 169. This means Community Forest User's Group (and also Collaborative Forest Management) should be scrapped, and ownership and control over and access to and management of lands, territories and resources, including community and collaborative forests given to Indigenous Peoples who are its right holders.
2. The Ministry of Forest amend the Forest Act 1993, Forest Sector Policy 2000, *Inventory Guidelines*, Conservation laws, including laws of National Park, Wildlife Reserve, Wildlife Hunting Ground and conservation areas to bring them in line with the UNDRIP and ILO Convention No. 169.
3. To guarantee the immediate realization of Indigenous Women's human rights, the Ministry of Forest should introduce a policy recognizing the rights of Indigenous Women to customary knowledge, skills, technology and

practices and end criminalization by giving unrestricted permission to Indigenous Women to go to community forest and other forests to carry out their customary economic empowerment activities.

4. The Ministry for Forest should obtain Free, Prior and Informed Consent (FPIC) of Indigenous Peoples and Indigenous Women. For this, the Ministry should establish its mechanism at the federal, Provincial and Local government levels and develop its protocol in line with the UNDRIP.
5. Indigenous Women's participation and representation at all levels, and also direct representation of Indigenous Peoples' and Indigenous Women freely selected by their customary process through customary institutions, should be fully ensured by amending laws, policies, regulation and guidelines of CFs accordingly.
6. The Ministry of Forest should recognize through its laws and policies that Indigenous Peoples and Indigenous Women are the custodians of forest and biodiversity.
7. The Ministry of Forest in particular and the State in general should fully recognize rights to self-determination and self-determined development of Indigenous Peoples and Indigenous Women in line with the UNDRIP and amend the constitution of Nepal as recommended in para 41(a) by the Committee on Elimination of Discrimination against Women (CEDAW) in its Concluding Observation, relating to the Periodic report submitted by the State party Nepal, issued on 14 November 2018.
8. The Nepal government should fully recognize autonomy and customary self-government systems in Indigenous Peoples' lands, territories and resources in line with UNDRIP and ILO Convention No. 169.



9. The Nepal government should formally recognize the customary laws and institutions of Indigenous Peoples.
10. The local, provincial and federal governments, and others who support community forests should fully abide with the UNDRIP, ILO Convention No. 169, Outcome Document of the World conference on Indigenous Peoples (WCIP) of 2014, Article 8(J) of the¹⁸ Convention on biological Diversity and its Akwé : Kon . Voluntary Guidelines, Forest Stewardship¹⁹ Council (FSC) Principles (specially Principle 3: Indigenous Peoples' Rights) and not fund or implement any program or project in the ancestral lands of Indigenous Peoples without obtaining FPIC from Indigenous Peoples and Indigenous Women.

5.2. Recommendations to Development Partners

11. Design and implement targeted programs for economic empowerment of women through customary knowledge, skills, technology and practices.
12. Give priority to vulnerable Indigenous Women.
13. Design and implement capacity building program of local Indigenous Women's Organizations and Customary Self-government Systems.

5.3. Recommendations to the Indigenous Women's Organizations

14. Provide orientation and training on Indigenous Women's rights to CFUGs.
15. Lobby with Ministry of Forest, FECOFUN and EC of CFUGs for meaningful implementation of ILO Convention no. 169 and the UNDRIP in all CF laws and practices to regain collective ownership over CFs, formal recognition

18 <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

19 <https://ic.fsc.org/preview.fsc-principles-and-criteria-for-forest-stewardship-fsc-std-01-001-v5-2-en-print-version.a-4 843.pdf>

of Indigenous Peoples as custodians of lands, territories and resources, and biodiversity, formal recognition of customary self-government systems to protect, manage and use of forest and its resources, and establish a mechanism for obtaining Indigenous Peoples' FPIC for any legal administrative interventions and activities related to development aggression.

Conclusion

This study revealed that Nepal government's laws, policies and practices related to CFs and its management through CFUGs are highly problematic for enjoyment of human rights by Indigenous Peoples, specially Indigenous Women. The government has ratified international laws or instruments of human rights, including ILO Convention no. 169 and adopted UNDRIP, and have made commitments to implement it in the CFs and CFUGs as well but existing laws, policies and practices violate rights to collective way of life, self-determination, autonomy, customary self-government systems, FPIC, Indigenous knowledge, skills, technology and practices, and direct participation at all levels of decision making. As result, Indigenous Peoples' customary practices related to natural resources have been criminalized, their livelihood, health, crafts, culture, wellbeing etc are severely affected. Hence, there is an urgent need to amend existing laws, policies and practices and/or bring new legislation and policies that are fully in line with UNDRIP and ILO Convention no. 169. It would be for common good if Indigenous Peoples reclaim collective ownership of and control over their ancestral lands, territories and resources and manage through their customary self-government systems. Violations of Indigenous Peoples, and Indigenous women's rights by the government should be stopped.



Photo Gallery



Urau Household-Morang



Dhimal women traditional dress



FGD Rajbansi-Jhapa



FGD Meche-Jhapa



Tajpuriya Community-Jhapa



Gangai FGD-Jhapa



Dhimal Traditional Weaving



Cow Dung for fule Urau



Media Campian



Focus Group Discussion



Marketing Management Training



Sunjhada CFUG-Morang