



## NEPAL

**Indigenous Peoples in protected areas:  
A country report on criminalization  
and violation of subsistence occupation  
and customary rights**



**Indigenous Peoples  
Rights International**

Championing Indigenous Peoples Rights

## Acknowledgements

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Caption photo cover:

(above) Majhi Indigenous Women hold a banner saying "River is our life, stream is our life, and the River is the Identity of Majhi Indigenous women" at a protest during the 2019 World's Indigenous Peoples Day in Kathmandu, Nepal.

(Photo: Dev Kumar Sunuwar)

(below) Indigenous Gurung women of Khasur village enjoy tea together.

(Photo: Tebtebba Foundation)

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## Executive summary

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Protected areas in Nepal make up 23.39 percent of its total land area. It comprises of national parks, hunting reserves, conservation areas and wildlife reserves. All these areas belong to, if not overlap with the ancestral lands of Indigenous Peoples. The establishment of these areas resulted in massive displacement and other human rights violations against Indigenous Peoples that continue until today.

From January 1, 2020 to June 24, 2021, there had been 22 incidents of harassment, abuse, and torture within Chitwan National Park. These incidents of human rights violations affected 536 individuals, 35 of them are Dalit while 139 are indigenous men and 397 are indigenous women. All the cases of the women happened while, or because they were found within the perimeters of the park collecting vegetables and ghongi, a kind of snail, which is popular dish particularly significant to Indigenous Tharu Peoples. Also, in Bardia National Park, on May 11, 2021, Soma Sonaha, 35, and Fulram Sonaha, 40, were arrested and detained by the Army at the Thakurdwara Army Camp for illegal fishing. These violations are common to other national parks and protected areas in Nepal.

Prior to the declaration of protected areas, the systematic dispossession of Indigenous Peoples from their lands and territories started during the unification of Nepal in 1769. The National Land Policy of 2019 was aimed at addressing issues of security of land rights. But the deeply entrenched discrimination and hierarchical society have kept ownership and access to natural resources within the elites of the higher caste. Approximately 80 percent of Nepal's indigenous population have less than 0.4 hectare of landholding.

The recent Constitution of Nepal, 2015 provides protection and promotion of Indigenous Peoples' knowledge, traditions, and culture. Their identities are particularly recognized in the National Foundation for Upliftment of Adivasi Janajati Act, 2002. There are 59 Adivasi Janajati who are enlisted under Schedule 1 of the Act. But at least 15 indigenous groups who claim to fall under the definition as stipulated in the Act are yet to be considered in the list. Nepal's government is guided by the Hindu Caste system, which was institutionalized in the General Code, 1857, also known as Muluki Ain.

The discrimination against Indigenous Peoples and the lack of proper implementation of laws that uphold and protect their rights are also prevalent in regulations on protected areas. The establishment of protected areas is one of the major causes of Indigenous Peoples' landlessness and lack of access to resources which are their linked to the social, political, and economic underdevelopment of the majority of them, particularly women and girls.

The National Parks and Wildlife Conservation Act, 1973 oversees national parks, strict nature reserves, wildlife reserves, hunting reserves, conservation areas and buffer zones. It provides the government power to manage, use, conserve, promote, and develop these areas. This Act criminalizes the subsistence, traditional occupation, and livelihood of Indigenous Peoples such as fishing, collecting plants, etc. Their presence within these protected areas is enough to get them into trouble with the law. The Act also provides immunity for park rangers in instances of attacks, including killing and assault of suspected violators of the law.

Meanwhile, the participation of local people in managing lands and forest is recognized in Buffer Zone Management Rules, 1996 and Forest Act, 1993. The latter particularly recognizes women, including indigenous women, to be part of the community forest users' group, which may constitute any registered body that aims to utilize forest products by developing and conserving such forest area for the collective interest. However, both laws fail due to local elite control and the deeply rooted discrimination against Indigenous Peoples.

The report recommends that the existing laws and regulations that are inconsistent with international instruments that Nepal is a party to, must be reviewed, amended, or revised, particularly, the ILO Convention No. 169 and UNDRIP that recognize the rights of Indigenous Peoples and their customary conservation model in the protected areas. It also highlights demilitarization of protected areas, instead, consider community guards hired from local indigenous communities to ensure respect of community cultures, way of life and dignity in protected areas. The involvement of multiple actors, international donors, and conservation organizations such as WWF, IUCN in conservation, brings better opportunities to rectify injustices in the protected areas although their effectiveness is yet to be proven. There is a need to investigate the human rights violations in protected areas, including initiatives by WWF-funded national parks in Nepal. Furthermore, providing just, fair, and adequate compensation in landform to displaced people is the key agenda, including respect for meaningful participation and right to free, prior, and informed consent of affected Indigenous Peoples.

The remedial mechanisms are not adequate to address or prevent the cases of human rights violation and the violation of collective rights of Indigenous Peoples. Thus, a powerful Special Mechanism (Tribunal) must be in place with a clear mandate to receive complaints (verbally and in written form), prosecute, and punish whoever is the perpetrator associated with PAs. The mechanism should ensure the participation of Indigenous Experts along with other experts having high integrity and legal background. Implement the recommendation of the Independent Panel of Experts commissioned by WWF. An independent, transparent, accessible, indigenous friendly and trustworthy mechanism should be commissioned with competent jurisdiction to handle cases of human rights and collective rights violation on the ground. In this regard, the mechanism should comprise representatives from indigenous communities, National Human Rights Commission, Indigenous lawyers and human rights activists.

## About this report

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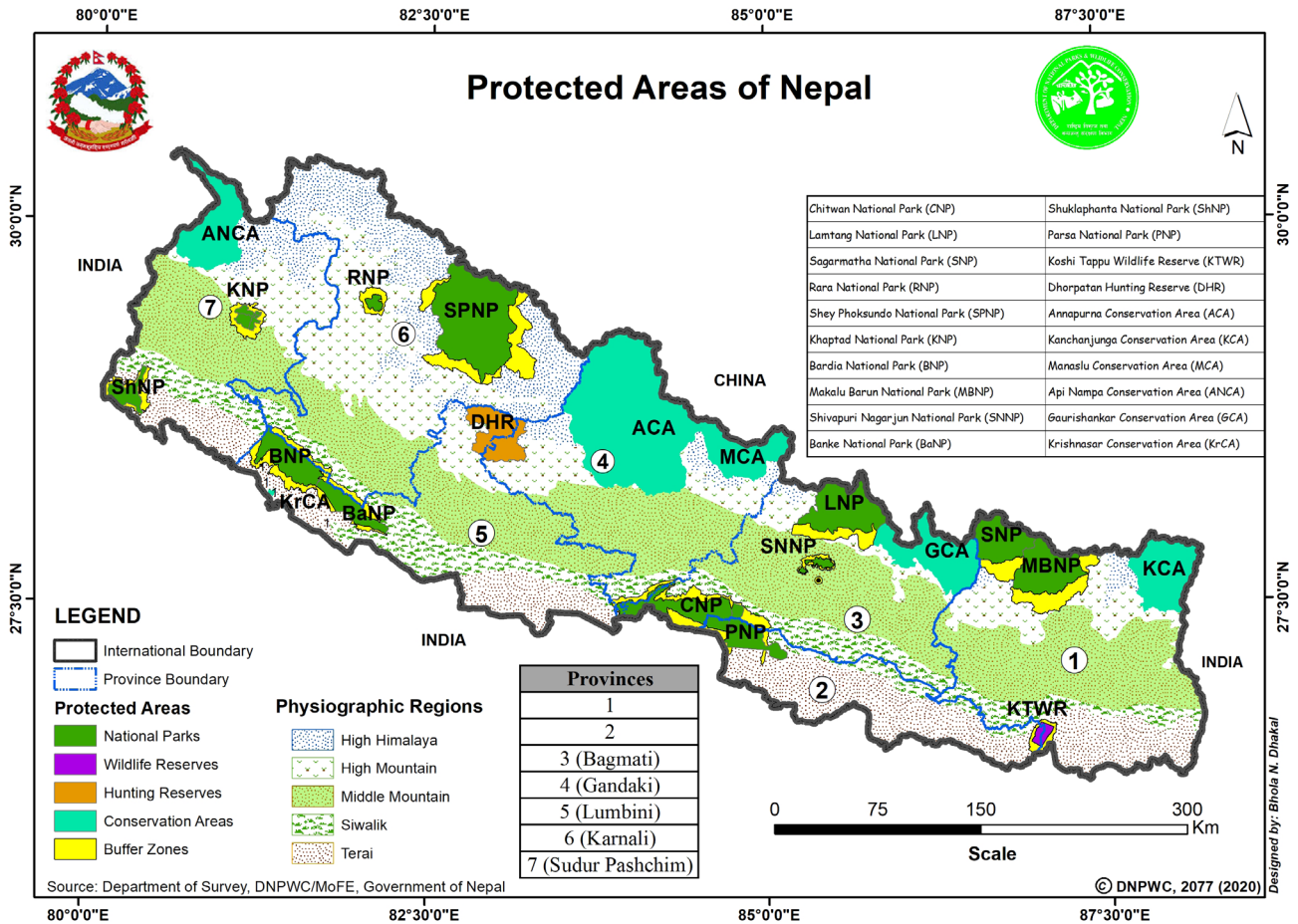
As part of its work to confront criminalization of, and human rights violations against Indigenous Peoples, Indigenous Peoples Rights International (IPRI) decided to contribute to the ongoing calls for a human rights-based approach to conservation. As a start, we conducted a research study on the issue and commissioned global and country reports covering the Democratic Republic of Congo, Kenya, Tanzania, Nepal, and Thailand. Each report is published independently and can be read as stand-alone publication.

The study aims to contribute in raising awareness and attention to the issue of criminalization and violations of Indigenous Peoples' rights in relation to environmental conservation. We hope that it will be useful for Indigenous Peoples and human rights organizations in their advocacy initiatives at the national, regional, and global levels. We also hope the reports will be useful for states and conservation institutions when developing programs and policies that aim to address human rights violations in conservation areas, including the access to justice and remedy of the victims of criminalization and human rights violations.

The discussions and data presented in Nepal country report were based from a desktop review of existing laws and policies on protected areas and conservation, including related studies and reports. Phone calls, online conversations, and discussions with locals from the ground were also conducted. The report covers incidents in Chitwan National Park, Bardia National Park, and Dhorpatan Hunting Reserve.

The cases of human rights violations presented cover the period January 1, 2020, to July 31, 2021.

## Protected Areas: an overview



Nepal has 12 national parks, a wildlife reserve, a hunting reserve, six conservation areas, and 13 buffer zones extending from lowland terai to high mountains, covering 23.39 percent of the total country's land.<sup>1</sup> All these areas belong to, if not overlap with the ancestral lands of Indigenous Peoples. The establishment of these areas as Protected Areas in Nepal resulted in massive displacement and other human rights violations against Indigenous Peoples that continue today.



## List of Protected Areas

SN	Name of Protected Areas		Establishment Date (AD)	Area Covered By (Square KM)	Area of Buffer Zone (Square KM)	Districts	Ancestral Land of Indigenous Peoples
1	Chitwan National Park		1973	952.630	766	Nawalpur, Parsa, Chitwan and Makwanpur.	Tharu, Chepang, Bote, Majhi, Kumal, Darai
2	Bardiya National Park		1976	968	507	Bardiya	Tharu, Raji, Sonaha, Khona
3	Sagarmatha National Parks		1976	1148	275	Solukhumbu,	Sherpa, Rai, Kulung, Nachiring
4	Langtang National Park		1976	1710	420	Nuwakot, Rasuwa and Sindhupalchok	Tamang, Hyolmo, Ghale, Sherpa,
5	Rara National Park		1976	106	198.	Mugu and Jumla	Karani, Mugal, Dolpo, Bhote, Khampa, Ninhwa, Tikchulung
6	Shey-Phoksundo National Park		1984	3555	1349	Dolpa and Mugu	Dolpo, Mugali, Bhote, Karani
7	Khaptad National Park (hernu parne)		1984	225	216	Bajhang, Bajura Doti and Achham	Magar Bhote,
8	Makalu Barun National Park		1992	1500	830	Solukhumbu and Sankhuwasabha	Rai, Bhote. Yamphu, Lohorung, Mewahang Sherpa Kulung, Singasa, Lhomi
9	Shivapuri Nagarjun National Park		2002	159	118.61	Kathmandu, Nuwakot, Sidhupalchok.	Hyolmo Tamang, Newar
10	Banke National Park		2010	550	343	Banke,Salyan, Dang, Bardiya	Tharu, Kusunda, Magar
11	Sukla Phanta National Park		1976	305	243.5	Kanchanpur	Rana Tharu, Khona ,Raji Tharu
12	Parsa National Park		1984	627.39	285.3	Parsa Bara, Makwanpur	Tamang, Bote, Tharu
Wildlife reserves							
1	KoshiTappu Wildlife Reserve	1976		176	173.50	Sunsari, Saptari, Udayapur	Rai, Bote, Urau, Tharu
Conservation area							
1	Blackbuck Conservation Area	2009		16.95		Bardiya	Tharu, Raji, Sonaha, Khona
2	Annapurna Conservation Area	1992		7629		Manang, Mustang, Kaski, Myagdi, Lamjung	Thakali (Tamang), Ghale, Gurung, Tingaule, Baragung, Thudam, Lhopa, Narphu
3	Manaslu Conservation Area	1998		1663		Gorkha	Ghale, Gurung, Siyaar
4	Kanchenjunga Conservation Area	1998		2035		Taplejung	Limbu, Rai, Lepcha, Bhote, Topkegola, Waling
5	Api Nampa Conservation Area	2010		1903		Darchula	Byaasi ( Rung)
6	Gaurishankar Conservation Area	2010		2179		Ramechhap, Dolkha, Sindhupalchok	Tamang, Sunuwar, Thami, Jirel , Surel
Hunting Reserve							
	Dhorpatan Hunting Reserve	1987		1325		Rukum, Myagdi, Baglung	Magar,Chantyal
Ramsar Sites ( Area in Hectares (ha)							
1	Bishajari Tal	2003		3200		Chitwan	Tharu, Bote, Majhi, Kumal, Chepang
2	Ghodaghodi Taal	2003		2563		Kailali	Tharu
3	Gokyo Lake Complex	2007		196.2		Solukhumbu,	Sherpa, Rai
4	Gosaikunda	2007		13.8		Rasuwa	Tamang, Ghale
5	Jagdish-pur Reservoir	2003		225		Kapilvastu	Tharu
6	Mai Pokhari	2008		90		Illam	Rai, Limbu, Sunuwar, Gurung
7	Phoksundo Lake	2007		494		Dolpa	Dolpo,Mugal
9	Rara Lake	2007		1583		Jumla, Mugu,	Mugu, Bhote, Khampa
10	Lake Cluster of Pokhara Valley	2016		26,106		Kaski	Gurung

## Impacts of laws and regulations on land management and protected areas on Indigenous Peoples' Rights

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The unification of Nepal in 1769 marked the beginning of the systematic dispossession of Indigenous Peoples of their lands and territories that persists today. The National Land Policy in 2019 aimed to address issues of security of land rights.<sup>2</sup> But the deeply entrenched discrimination and hierarchical society have kept ownership and access to natural resources within the elites of the higher caste. Approximately 80 percent of Nepal's indigenous population have less than 0.4 hectare of landholding.<sup>3</sup>

The acts (ain), regulations (niyam), directives (nirdeshika), standard procedures (maapdanda karyabidhi), and other institutionalized legal instruments in Nepal that relate to protected areas do not recognize Indigenous Peoples' communal land tenure and other customary rights. Consequently, the law on protected area and regulations on national parks criminalize their existence and the conduct of their traditional practices and occupation within these areas.

The recent Constitution of Nepal, 2015 indicates protection and promotion of Indigenous Peoples' knowledge, traditions, and culture. Their identities are particularly recognized in the National Foundation for Upliftment of Adivasi Janajati Act, 2002.<sup>4</sup> Referred to as Adivasi Janajati, Chapter 2 of the Act defines Adibasi/Janajati as "tribe or community as mentioned in the Schedule having its own mother language and traditional rites and customs, distinct cultural identity, distinct social structure, and written or unwritten history." There are 59 Adivasi Janajati who are enlisted under Schedule 1 of the Act. But at least 15 indigenous groups who claim to fall under the definition as stipulated in the Act are yet to be considered in the list.

The Nepalese government, however, operates within the Hindu Caste system, which was legally institutionalized in General Code, 1857.<sup>5</sup>

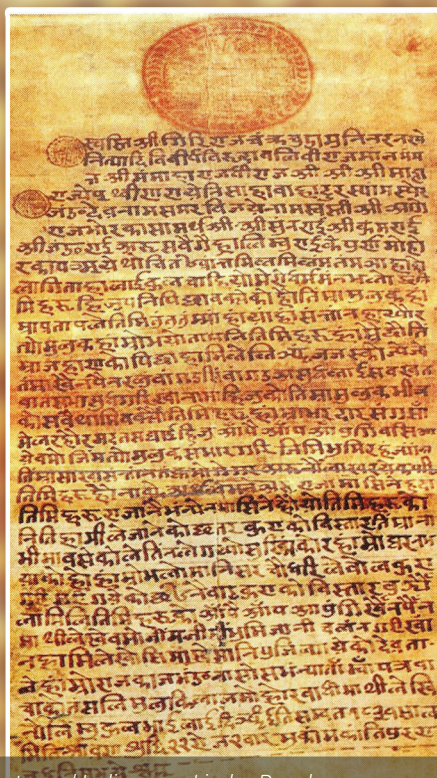
Also known as Muluki Ain, the General Code, 1857 classifies Indigenous Peoples into two groups, namely (a) Masinya Jati or those who can be enslaved and whose property including lands can be confiscated when found guilty of a crime; and (b) Namasinya Jati or those groups that can be enslaved. Some of the indigenous groups considered as Mainya Jati are Tharus, Chepang, Kumal, Bote. They were

the groups mostly affected and displaced from the establishment of protected areas and suffer from continuing human rights violations.

Nepal is a signatory to several international conventions. Particularly relevant to Indigenous Peoples are the UN Convention on the Elimination of Racial Discrimination, UN Convention on the Elimination of All Forms of Discrimination against Women, and ILO Convention 169. Although not a convention, Nepal has also voted in support of the UN Declaration on the Rights of Indigenous Peoples. Nepal's Treaty Act, 1990 ensures the alignment of national laws to its international commitments to uphold human rights. It states that prevailing laws inconsistent with the international treaties ratified by the Government of Nepal shall be void and the provisions of the international treaty shall be enforceable as good as Nepalese laws.<sup>6</sup> But like the Adivasi Janajati Act, 2002, the Treaty Act, 1990 also fails in implementation.

The discrimination against Indigenous Peoples and the lack of proper implementation of laws that uphold and protect their rights are also prevalent in regulations on protected areas. The establishment of protected areas is one of the major causes of landlessness of Indigenous Peoples. This and the lack of access to their resources are linked to the social, political, and economic underdevelopment of the majority of Indigenous Peoples, particularly women and girls. These are also associated to their declining population, which, as observed in the population census of 1991 and 2001, show a decrease of 2 percent.

## Land management laws and indigenous communal land tenure systems



Tasalli Muluki, 1774 Treaty between the State and Indigenous Limbu People

Among the laws that do not recognize the collective land ownership and tenure system of Indigenous Peoples are Private Forest Nationalization Act, 1957, Land Survey and Measurement Act, 1963, Land Reform Act 1964, and Pasture Land Nationalization Act, 2013.

The Land Measurement Act, 1963 and Land Reform Act, 1964 impose land ceiling and recognize only individual registration of lands.

In its second amendment in 1968, the Land Reform Act, 1964 particularly abolished the communal land tenure system called Kipat. It affected the Kipat communities which include the Limbu, Rai, Majhiya, Bhote, Yakha, Tamang, Hayu, Chepang, Baramu, Danuwar, Sunuwar, Kumhal, Pahari, Thami, Sherpa, Majhi, Lapcha. They live mainly in the eastern and western mainland of Nepal.<sup>7</sup>

## **Laws on protected areas and national park regulations**

The National Parks and Wildlife Conservation Act (NPWCA), 1973 regulates protected areas in Nepal.<sup>8</sup> It oversees national parks, strict nature reserves, wildlife reserves, hunting reserves, conservation areas and buffer zones with the aim of ensuring “natural beauty and to maintain good manners and welfare of the general public,” as indicated in Section of the Act. The government has the power to manage, use, conserve, promote, and develop these areas.

Section 3 of the NPWCA, 1973, gives the power to the government to declare National Parks and Wildlife Conservation areas if it deems necessary. The provision does not mention the land acquisition process and the compensation. This Act directly contradicts article 25 of the Constitution, 2015, which guarantees fundamental property rights. Government can only acquire an individual's property for public interest by providing compensation. Ab initio, the NPWCA is inconsistent with Convention No. 169 and with the UNDRIP, particularly with provisions on lands and resources. No provision of the Act recognizes Indigenous Peoples' rights over lands, territories, and natural resources.

In general, the Act restricts Indigenous Peoples' access to protected areas. Their mere presence in protected areas is viewed with suspicion by park authorities. Access is given only to those who are able to secure specific permits for any of the following activities: hunting, collection of specimen and/or gathering of any natural resources. However, permits are granted more to tourism-related developments such as construction of hotels, lodges, public transportation, and other similar activities through a contract. Also, Indigenous Peoples living in these areas are more likely to have low literacy rate and are unaware of the regulations, thus, least likely to have the capacity to secure the required permits.

The NPWCA, 1973 allows warrantless arrest provided that the authorized person believes with reasonable ground that the person being arrested violated the Act. In Section 24, it also specifies that if the alleged offender resists arrest or attempts to escape, the arresting officer may “resort to the use of arms [and] may open fire aiming, as far as possible, below the knee, and if the offender or the accomplice dies as a result of such firing, it shall not be deemed to be an offense.”

In Section 23, authorized person or warden is given power “to inspect and search the house, compound, land or all types of vehicle 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.” Although the power to inspect and search requires a warrant, the warrant can be secured later if the authorized person believes that the alleged offender intends to abscond or suppress evidence of his/her offence.

Sections 23 and 24 in the Act are highly open to abuse by those that implement the law, in this case, the wardens or park authorities who enjoy particular impunity. Local people, majority of them from indigenous communities, living around these protected areas are more highly exposed to human rights violations.



*National Parks and Wildlife Conservation Act, 1973 allows arresting officer to open fire on an alleged offender and will not face any accountability if s/he ended up killing the alleged offender.*



Moreover, Section 5 of the NPWCA, 1973 states a prohibition “to occupy, clear, reclaim or cultivate any part or grow or harvest any crop, ... 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.” In one way or another, most of these activities are linked to the traditional occupation or subsistence of Indigenous Peoples. These restrictions put them at higher risk of incurring the punishments for violating the Act but at the same time, these violate the protection and promotion of Indigenous Peoples’ knowledge, traditions, and culture as recognized in the Constitution of Nepal, 2015. The Act provides for imprisonment of up to fifteen years and/or a fine of up to one hundred thousand Nepalese Rupees (around 830 USD) depending on the nature of the violation.

Several regulations specific to certain national parks provide for obtaining license for traditional fishing subsistence, but the process of securing the license does not apply to all fishing communities. For example, the regulation of Chitwan National Park excludes the Majhi community living there from the list of traditional fishing groups. Indigenous communities view the process to be vague and highly dependent on the discretion of the authorized park warden. The Bardia National Park Regulation, 1996 allows Indigenous Bote, Darai, Kumal, and Tharu communities to obtain fishing license with a fee of 100 Nepalese Rupees (around less than 1 USD) and with the condition that only fishhooks will be used. Similarly, Banke National Park Regulation, 2014 allows Indigenous Khuna and Badi communities to obtain fishing license and they must pay a levy of NRS 100 (less than 1 USD). Under Chitwan National Park Rules, 1974, Indigenous Bote, Darai

and Kumal communities are allowed to obtain fishing license and to pay NRS 100 with the condition that only one person per family is allowed to obtain a license and will use only one hook per day.

In 2018 – 2019, Chitwan National Park stopped issuing new fishing licenses to the Bote community to preserve the aquatic life in the area. Indigenous Peoples' rights advocates have criticized the decision and have been demanding that the rights of the Bote to practice their traditional occupation in their ancestral lands of Chitwan National Park be respected.

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*"We don't know what will happen to us if the fishing ban continues. The government, conservationists and the park authorities must think about the survival of our community too."*

*-- Suresh Bote, a resident of Bharatpur-31 in Chitwan National Park*

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## **Regulations on participatory conservation approach and indigenous women**

Unlike other protected areas, buffer zones are open to local people, including Indigenous Peoples, to occupy and take part in the use and management of the natural resources within. Buffer zones refer to the "peripheral area of a national park or reserve as prescribed under Section 3a of the National Parks and Wildlife Conservation Act, 1973 in order to provide facilities to use forest resources on a regular and beneficial basis for the local people." The participation of local people in managing buffer zones is elaborated in the Buffer Zone Management Rules, 1996.<sup>10</sup> But the participatory conservation model is criticized by indigenous organizations for reducing Indigenous Peoples from being rights holders to beneficiaries of a government project.

The Buffer Zone Management Rules, 1996 used the terms Upabhokta (consumers/users), Upabhokta Samitee (users' committee), and Sthaniya (locals). Upabhokta is defined in Section 2e as "all the people living within the Buffer Zones to utilize forest resources and direct beneficiary from the project to be operated for the community development of local people."

Furthermore, the government-appointed wardens who oversee these protected areas to ensure participation of local people have been known to discriminate against Indigenous Peoples. In general, the latter complain about the Buffer Zone

Management Committees and Revenue Distribution Committees being highly politicized and unable to secure their meaningful and effective participation. The buffer zones have become spaces of conflict between Indigenous Peoples relocated from within the national parks or reserves and the migrants from other villages who are mostly non-indigenous.

Participatory initiatives are particularly challenging for indigenous women who face discrimination for their identity and their gender. They are also not particularly recognized in the Constitution and other laws except in the National Foundation for Upliftment of Adivasi Janajati Act, 2002. Section 7 of the Act provides for government nomination of ten indigenous women in the governing council. This is a novel and notable initiative from the government but its effectiveness in ensuring the recognition of the voice of the majority of indigenous women require further study. Also, the Act is implemented separately from regulation on land management and protected areas.

The Forest Act, 1993 recognizes women, including indigenous women, to be part of community forest user groups, which may constitute any registered body that aims to utilize forest products by developing and conserving such forest area for the collective interest.<sup>11</sup> But elite control of the community forest user group has undermined an equitable, inclusive and pro-poor forest use and management for indigenous women.<sup>12</sup>

The regulations on protected areas and land management in Nepal have no room for meaningful participation and respect of Indigenous Peoples' collective rights to free, prior and informed consent or self-determination. In general, government efforts for participation and inclusion of Indigenous Peoples and other minority groups, particularly women and girls and those outside the higher caste system, are often met with doubt and suspicion from the people they hope to include. Generations of discrimination against them and the systematic approach of disregarding and violating their self-determination and self-governance that continue until today have created a chasm between them and the state. Unless that gap is bridged and Indigenous Peoples' cycle of underdevelopment is specifically addressed, participatory approaches run the risk of elite capture, among other challenges. Its intended outcome of sustained empowerment and equitable development of Indigenous Peoples, particularly women and girls, are highly likely to fall short.

## Protected areas against Indigenous Peoples

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The primary reason for the establishment of protected areas in Nepal was to provide recreational places for the high caste political elites, and not for conservation and preservation of the environment. This however, eventually evolved to protecting and promoting conservation of wildlife and natural resources, and more recently, as resolutions to global issues of climate change and biodiversity loss. The access to these areas has remained unrestricted only for the powerful few. The economic benefit from tourism is also largely concentrated in the hands of the elites.

In managing these protected areas, the mainstream approach of fortress conservation of separating nature from people has been implemented. With the increasing evidence and reports linking fortress conservation to human rights violations of local communities who are mostly Indigenous Peoples, there has been a growing demand to re-examine its implementation.<sup>13</sup> However, the reconsideration of fortress conservation approach has been slow in Nepal or even globally.

The mainstream approach to conservation reflects the dominant narrative in Nepal of disregarding the roles and contributions of Indigenous Peoples in managing and conserving the lands, territories and natural resources declared as protected areas. It is antagonistic to their culture and self-governance which are intrinsically linked to their lands, territories and natural resources. The establishment of protected areas that started in 1970s resulted in massive displacement of Indigenous Peoples from their ancestral lands, which remain restricted to them until today. This is also true in other countries that implement fortress conservation.

Traditional occupation and livelihood of Indigenous Peoples are often integrated in their customary practices of management, use and conservation of their lands, territories, and natural resources. Despite the growing appreciation and recognition of their roles and contribution to conservation and these rights protected as part of Nepal's commitment to the international community, human rights violations against Indigenous Peoples in national parks, reserves and other protected areas are common. There is still lack of recognition of their role as custodians of customary lands and lack of protection of their collective rights



to lands and customary systems linked to sustainable use and management of natural resources. Tharu peoples in western Terai (or plain land) have traditional and customary institutions referred to as Bardghar, Bhalmansa, and Mahatanwa which guide their community's use and management of natural resources, including identifying specific spaces for preservation. These are considered as good practices of collective democratic governance where all processes, including choosing of leaders, are transparent and all members of the community directly participate.

Chitwan National Park (CNP) is Nepal's first national park established in 1973 to conserve the one-horned rhinoceros. Historically, it was considered as the private hunting ground of the royal family. The feudal Rana prime ministers of Nepal used the area as a personnel hunting reserve from 1846 to 1940.<sup>14</sup> Until the 1950s, during the Rana regime<sup>15</sup>, the Chitwan valley<sup>16</sup> was a privileged hunting ground set up as the comfortable camps for the feudal big game hunters and their entourage, where they stayed for a couple of months shooting hundreds of tigers, rhinoceroses, leopards and sloth bears. After its establishment, reports have shown that the population of the one-horned rhinoceros actually declined. Despite such realization, Indigenous Peoples' management of the lands and natural resources including the one-horned rhinoceros was never recognized. As the first established protected area, CNP was enlisted as a World Heritage Site in 1984.

The Bardia National Park was established in 1976 in the ancestral lands of the Tharu and Raji, the latter a highly marginalized group of Indigenous Peoples in Nepal. During the time of Rana oligarchy and monarchy, the Bardia National Park was considered their own hunting reserve and they would come with their guests to hunt, which was the purpose of recreation.<sup>17</sup> Conservation or protection was not the objective of the protected areas albeit these were recreational sites of the rulers and powerful people. This has evolved over the years. Conservation, protection of biodiversity, and tourism for recreation and economic gains are the current core objectives of protected areas in Nepal.

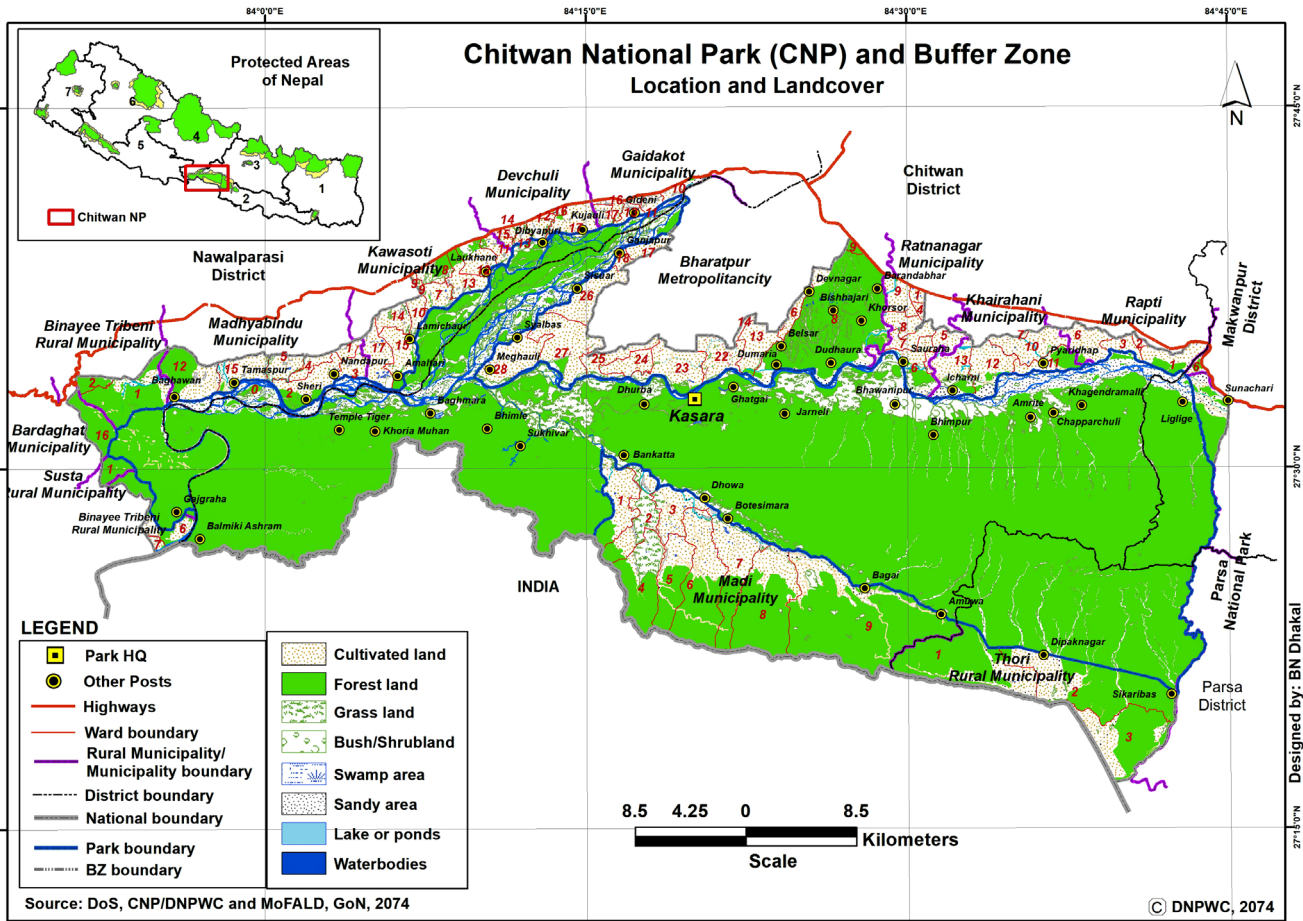
## Cases of criminalization and human rights violations

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The National Parks and Wildlife Conservation Act, 1973 and associated regulations do not have any provision for the involvement of the army in protected areas. However, there are 188 Nepali Army posts established in 12 of the 22 protected forests.<sup>18</sup> The twelve battalions and army units with around 6,778 troops have been policing the forest areas measuring around 9,767 sq km.<sup>19</sup>

Incidents of killing, torture, and illegal arrest and detention, rape and trumped-up charges are common experiences for Indigenous Peoples living in protected areas. All these incidents involve the Nepali Army whose abuse of power with utmost impunity is experienced by most of the Indigenous Peoples who are merely practicing subsistence occupation. They are accused of illegal fishing or gathering and collecting Ghongi, a kind of snail, or vegetables. Sometimes their mere presence near the river is enough for them to be threatened by the Army.

The Nepali Army's interest to get the benefit out of Chitwan National Park's resources increased the tension between them and the national park management warden. This has led to the clash that jeopardized their relationship when they are the ones who are authorized to protect the National Park. The Minister of the Forest and Environment commissioned an investigation team to look into the incident (The Kantipur National Daily, 25 July 2021 ). The same authorities arrest Indigenous Peoples who use the resources, when actually it is them, the authorities who misuse these for their own benefits.



## Chitwan National Park

From January 1, 2020 to June 24, 2021, there had been 22 incidents of harassment, abuse, and torture within Chitwan National Park. These incidents of human rights violations affected 536 individuals, 35 of them are Dalit while 139 are indigenous men and 397 are indigenous women. All the cases of the women happened while, or because they were found within the perimeters of the park collecting vegetables and ghongi, which is a popular dish significant to the Tharu peoples.

It is common for members of indigenous communities to be hired as daily-wage laborers by the National Park Management to clear bushes in buffer zones and national parks. Often, it is while doing this work that they also collect and gather forest produce. But when the Nepali Army finds them collecting and gathering, they are met with violence and the produce are seized and destroyed. The attacks often involve slander or insults and beating or other forms of physical harm. Similarly, indigenous men also face the same fate from the army but their cases often involve fishing. In some occasion, even just being seen near the Narayani River gets them into trouble. In one incident, nine Indigenous Tharu men were beaten by the army after being accused of illegal fishing. Three of them were illegally detained. In some cases, the army set the indigenous men up. Their

traditional fishing nets are confiscated and photographed by the army with commercial fishing nets that serve as proof for a trumped-up case against them.

There was a case at the Chitwan National Park where the army arrested and beat up indigenous men who were collecting Ghongi. Chiran Kumar Buda, the perpetrator in the killing of Rajkumar Praja was meted a nominal punishment. He was imprisoned for only nine months by the Chitwan District Court.<sup>20</sup> Rajkumar Praja who belonged to the Chepang community was tortured on July 16, 2020 when the army brutally beat him with sticks and kicked him with boots and tried to drown him in the river.<sup>21</sup> Santalal Chepang who was tortured along with Praja said that the latter who was severely wounded with his whole body covered with bruises, and others were compelled to carry wooden logs to the LigLige Post. Praja died during medical treatment on July 23, 2020. The decision of the Court was not consistent with Chapter 12 of the Muluki Criminal Code, 2017 which states that recklessly killing a person is subject to three to 10 years of imprisonment and a fine of 30 thousand to three hundred thousand NRS.<sup>22</sup>

In March 2021 there was a quarrel between an army man and a local who was one of the seven indigenous persons accused of going near the river. They are still living in fear that they might be targeted by the army and slapped with false charges.

On July 14, 2021, in the Buffer Zone area in Bharatpur Municipality-22, more than 25 drunken National Park Guards (Army) beat up seven men namely, Amar Bote, Kamal Bote, Yani Majhi Bote, Bashudev Bote, Jitendra Mahato, Subash Mahato, and Dinesh Tamang who were attending the mortuary rite of Mr. Jita Mahato. According to their culture, neighbors must accompany the family of a dead person for 21 days. The victims said that army personnel compelled them to sign a paper that said they had committed violations at the national park and that the army had nothing to do with this case, after which they were released. This has been a trend with the army to control and suppress Indigenous Peoples living in the CNP Buffer Zone.

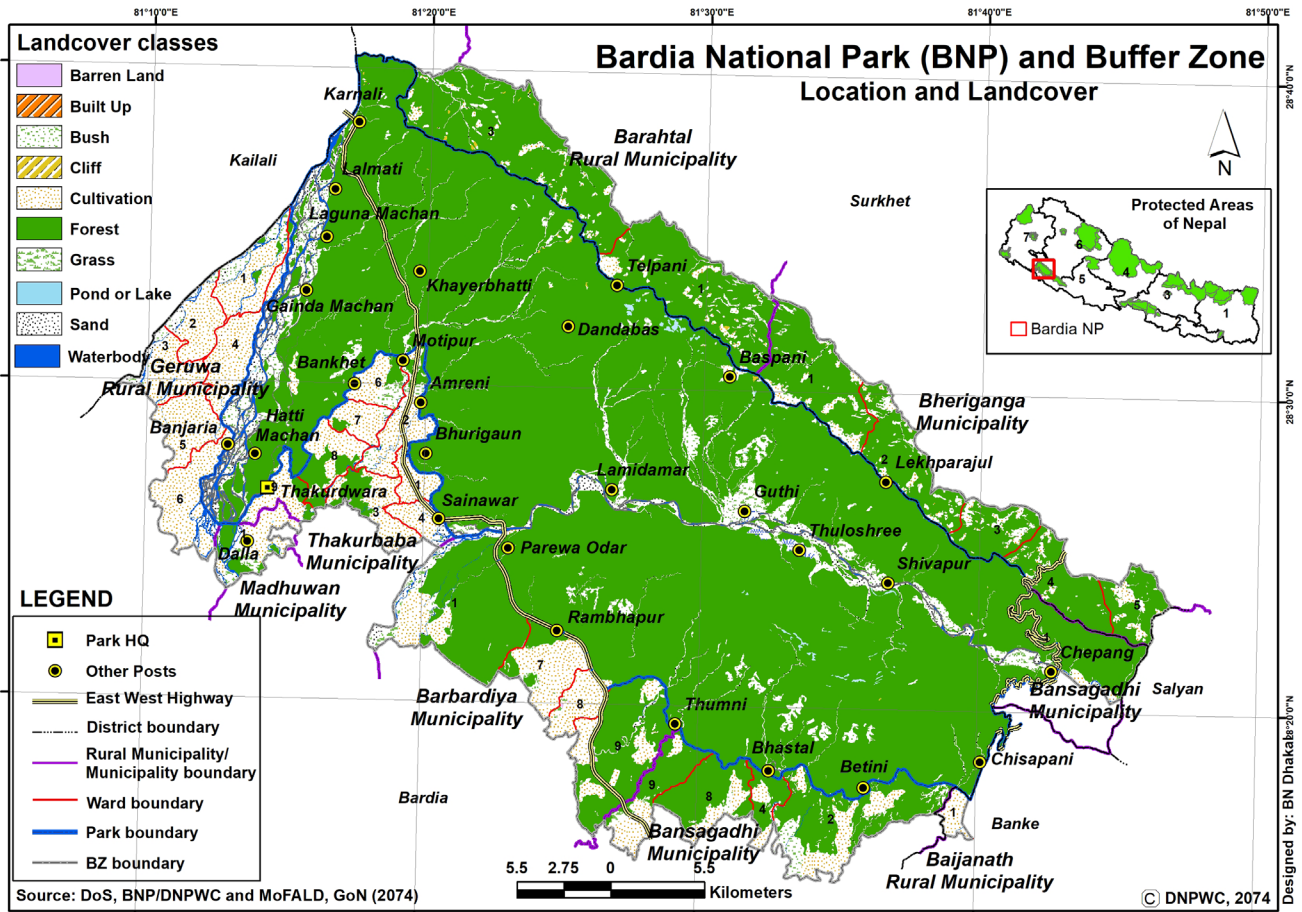
In the protected areas, it is a common practice for Park Authorities to be biased and prejudiced against Indigenous Peoples and to treat them as if they were criminals or involved in criminal activities whom they can interrogate anytime without any reason or cause. In the name of combating anti-poaching activities, the army and authorities raid the community and barge into houses at night, arrest people arbitrarily and hold them in the detention center. Various reports reveal that people are tortured in unprecedented methods for them to confess the allegation against them. The confession is a key factor in deciding the case in court. When someone is caught while searching for forest products, wild

vegetables, or Ghongi, the most common charge is poaching or clearing the forest products, which is strictly prohibited by laws. The fact is, the buffer zones in the Terai are home to some of the most disadvantaged and impoverished indigenous groups, including the Tharu, Chepang, Sohana, Bote, Kumal, and Santhal.<sup>23</sup> For sustenance, they rely heavily on the natural resources found along the borders of forest reserves. Facing false cases and charges, the chicanery of authorities are often experienced by Indigenous Peoples in the protected areas.

Illegal animal trophy trafficking is a transnational organized crime.<sup>24</sup> In the context of Nepal, the illegally trafficked trophy goes to the international market including neighbouring country China. There is high-level people involvement in trophy trafficking, but they are behind the scene and never get arrested. Authorities are also involved in such kind of activity. Chitwan Chief District Officer accused Assistant Warden, Kamal Jung Kunwar himself of being involved in rhino horn trafficking along with another<sup>25</sup> personnel. Kunwar was involved in the alleged killing of Sikharam in the detention center, and faced a charge of stealing the horn of the rhino. He filed a Writ Petition (066-WO-0038) and the court struck down the action of the then Ministry of Forest and Soil Conservation against Kunwar. The latter won the case on technical ground. The Commission of Abuse of Authority holds the mandate to investigate cases on abuse of authority but has no decision-making power over it. It is crystal clear that the fact of misusing the trophy (rhinoceros horn) and Kunwar's involvement remain unresolved. Kunwar's story exemplifies how the government of Nepal protects perpetrators and discriminates against Indigenous Peoples.

The expose on the complicity of World Wildlife Fund (WWF) in the human rights violations in Chitwan National Park paints similar narratives of cases in this report. Despite international attention on the issue, WWF has yet to conduct any concrete action to address the cases put forward against them.

For the first time, the Nepali Army released an official statement declaring that they are working in accordance with the Nepal Constitution, 2015 and respects the international human rights law. They took action to address past mistakes and violations of the Army, including those that happened in national parks.



## Bardia National Park

On May 11, 2021, Soma Sonaha, 35, and Fulram Sonaha, 40, were arrested and detained by the Army at the Thakurdwara Army Camp in Bardia National Park. The two were charged with illegal fishing. After nine days, they were released upon payment of bail amounting to NRS 20,000 (169 US\$) each and the case is sub judice or still ongoing and under consideration of the Court.

## Dhorpatan National Park

Rape is a crime subject to seven years of life imprisonment depending on the age and condition of the victim. According to Sec. 66 (1) (b) of the Army Act, 2007, a rape case is under the jurisdiction of the Civil Court, and in such a case, an accused ipso facto is suspended from his service until the final hearing. It is a fundamental right of every woman not to be subjected to any kind of sexual violence. The crime is punishable by law and the victim shall have the right to obtain compensation in accordance with the law. Despite these laws, the alleged

rape of indigenous women has not been stopped and many perpetrators are not brought to face legal prosecution. One community defender informed that indigenous women routinely face harassment and verbal abuse and slandering, but it has become a general trend to tolerate such crimes because nothing happens even if there are complaints against the wrongdoer. This being the case, there is a high probability that crimes such as rape and attempted rape are not brought to the public or authorities by a victim. It is almost impossible to get information about such situation. In the Dhorpatan Hunting Reserve (DHR), Sita Buda, who was allegedly raped by an army personnel while she was collecting fodder in the forest said that she was given Rs. 100 (1USD) for her to keep her silence. The alleged rape case was not registered; the army personnel was said to be transferred to another district within a night to settle the case.<sup>26</sup> The laws and implementing agencies are not indigenous women-friendly, and there is no easy access to remedial mechanisms for them.

### **Koshi Toppu Wild Life Reserve**

The Army uses inhumane methods of punishment without consideration of physical or health conditions of victims. A woman who had given birth only 13 days before, was ordered to do Uth-Bas (sit down and rise up) 100 times when she entered the Koshi Toppu Wild Life Reserve to collect fodder for her goats. At that time, her husband was not home, so she had to do the job. She was still going through a post-partum period and thus requested the Army to excuse her, but to no avail. She did it with great difficulty and her body ached for several days.<sup>27</sup> Article 38 (3) of the Constitution of Nepal, 2015, states that the woman is free from any kind of physical, mental, sexual, and psychological abuses and exploitation, and such actions are punishable by law. The victim has a right to get compensation as per section 228 of the Civil Code, 2017. Rape and sexual harassment are strictly punishable by the Civil Code, 2017 (Sec. 219 and 224), and this type of crime comes under the jurisdiction of the Civil Court. There is almost no case that has been put to trial in the Civil Court against any Army personnel alleged to be involved in sexual crimes.

## Conclusions and recommendations

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The establishment of protected areas dispossessed Indigenous Peoples of their ancestral lands through violent means with the deployment of the military. Indigenous Peoples are treated inhumanely while being evicted from their settlements and houses. Army men rape women and murder them in some cases. Majority of the people were evicted without being provided with land for proper settlement, and those who were, did not get fair and sufficient land for them to survive.

Among others, the establishment of Protected Areas has four major adverse impacts on Indigenous Peoples:

- (1) It was an internal colonization process to dispossess them of lands, subjugate and treat them as alien, without considering them as citizens with associated rights guaranteed under the Constitution and other laws. Simultaneously, their identity-related cultural values, practices, and belief systems were destroyed systematically, which can be considered as cultural genocide.
- (2) It was a means of structural violence: The Protected Areas- related laws do not recognize collective rights of Indigenous Peoples particularly their attachment or link to their lands, territories, natural resources, and inter-dependency. In practice, Indigenous Peoples are seen as suspects and threats to Protected Areas, and as encroachers. They are always under the surveillance of security forces, face criminal charges and become victims of false cases with manufactured evidence, and without independent investigation.
- (3) It is systematic discrimination and routine and serious violation of the right to live with dignity. The security forces misbehave, mistreat, and harass indigenous women. The criminalization of Indigenous Peoples and traditional livelihoods on one hand, and the impunity enjoyed by perpetrators on the other hand, are the results of defective laws and prejudice against Indigenous Peoples.



- (4) Conflicts in laws water down the fundamental rights and civil rights protected under the Constitution and other civil rights laws in protected areas. The existing PAs laws conflict with the number of international laws that include ILO Convention No. 169 and the UNDRIP that Nepal is a party to.

Importantly, the Constitution of Nepal, 2015, the Treaty Act, 1991, and various jurisprudences of the Supreme Court clearly articulate that the provisions of international laws are equivalent to national laws, and in case of inconsistency, international laws prevail. Despite facts, international laws have not been implemented in the protected areas.

Indigenous Peoples survive at gunpoint and are primary victims of false charges such as poaching or aiding poachers, and a good number of accused are convicted based on coerced confession. The investigation procedure is not transparent, fair, and competent. Torture is a common practice for confession, and it is often not examined in the Court in the proper manner. Public media reveals that poaching and smuggling are only possible with the involvement of powerful people and even some high-profile Protected Areas Personnel. In this regard, Indigenous Peoples are neither powerful nor high-profile personnel. The facts reveal a lot more than pointing fingers at Indigenous Peoples about the allegation of poaching. It is crystal clear that a holistic and comprehensive study is the utmost to diagnose the root cause of the problems and to resolve it.

Demilitarize, or reduce the presence of army personnel and community guards hired from local indigenous communities to ensure respect of community cultures, way of life and dignity in protected areas. Lately, human rights violations and inhumane treatment of Indigenous Peoples in the PAs have been exposed more than before. Sections in the National Park Law and national park regulations that provide immunity of army and warden in human rights violations should be repealed. It has been raised at the community, national and international levels and became an urgent matter to be dealt with. The involvement of multiple actors, international donors, and conservation organizations such as WWF, IUCN in conservation, brings better opportunities to rectify injustices in the protected areas. There is a need to investigate the human rights violations in protected areas, including initiatives by WWF-funded national parks in Nepal. In fact, the two core aspects of historical injustices and structural violence are important to be addressed to overcome the problems faced by Indigenous Peoples. In this regard, almost no attention has been paid.

Providing just, fair, and adequate compensation in landform to displaced people is the key agenda. The previous government has formed a land commission to provide land for squatters and landless Dalits. This land commission is important as a precedent for the establishment of a powerful Commission to resolve the land dispossession issues and its impacts in the Protected Areas. The Commission should have clear jurisdiction and mandate to resolve all problems. Meaningful participation and right to Free Prior and Informed Consent of affected Indigenous Peoples must be the bottom line of the establishment of the Commission.

The existing laws and regulations that are inconsistent with international instruments that Nepal is a party to, must be reviewed, amended, or revised, particularly, the ILO Convention No. 169 and UNDRIP that recognize the rights of Indigenous Peoples and their customary conservation model in the protected areas .

The existing conservation model needs to be superseded with Indigenous Peoples self-management or co-management model of conservation. It does not only address the problems but also ensures the sustainability of the conservation. Restructure the protected area with Indigenous Peoples' self-management and co-management, and ensure their right to FPIC, benefit sharing, and meaningful representation in every structure of the protected areas. Amend the National Foundation for Upliftment of Adivasi Janajati Act, 2002 to specifically recognize customary practices of Indigenous Peoples in conservation and protection of environment; and to consider them as partners in managing protected areas that their ancestors have been occupying prior to the unification of Nepal.

The remedial mechanisms are not adequate to address or prevent the cases of human rights violation and the violation of collective rights of Indigenous Peoples. Thus, a powerful Special Mechanism (Tribunal) must be in place with a clear mandate to receive complaints (verbally and in written form), prosecute, and punish whoever is the perpetrator associated with PAs. The mechanism should ensure the participation of Indigenous Experts along with other experts having high integrity and legal background. Implement the recommendation of the Independent Panel of Experts commissioned by WWF. An independent, transparent, accessible, indigenous friendly and trustworthy mechanism should be commissioned with competent jurisdiction to handle cases of human rights and collective rights violation on the ground. In this regard, the mechanism should comprise representatives from indigenous communities, National Human Rights Commission, Indigenous lawyers and human rights activists.

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- <sup>16</sup> The Chitwan Valley is an Inner Terai valley in the south of Nepal, encompassing the districts of Makwanpur, Chitwan and Nawalpur. The valley is part of the Terai-Duar savanna and grasslands eco-region of about 150 km (93 mi) length and 30–48 km (19–30 mi) width.
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