

Nepal

Condensed from the *Study on Status of Indigenous Peoples' Land and Resource Rights* by the National NGO Federation of Nepal. For more details of the study, contact: info@ngofederation.org.

Nepal is a country of rich ethnic, linguistic, religious, cultural and geographical diversity. Based on the 2011 census, there are 125 different caste groups in Nepal. Out of these, 59 groups belong to IPs as categorized by Nepal Federation of Nationalities (NEFEN).



Tamang indigenous people in Nuwakot District.
Photo by CSRC



IPs in Nepal can be divided into two distinct regional groups: Hill IPs and Terai IPs.

Many indigenous communities, notably the Majhi, Bote, Musahar, Bankariya and others who lived in and around protected areas (national parks, wildlife reserves, buffer zones and conservation areas) have been displaced and have now become landless and deprived of their traditional occupations.

Access of indigenous communities to forests, rivers and wetlands (fishing, watering of domestic cattle), and farming and foraging lands – that fall within the jurisdiction of protected areas (PAs) – has been restricted and curtailed in Nepal.

The government of Nepal does not recognize indigenous territories or community ownership of land. Nearly all forests and grasslands have been nationalized in the past half-century; none have been restored to community ownership.

Customary systems of collective management of land, including forest and rangeland commons, are not recognized in protected areas or the national forest. Indigenous peoples of the Hills and the Terai regions, including Inner Terai, have lost their traditional political system, and with it many aspects of the traditional social structure.

For example, the Tharus (indigenous peoples of the southern plains of Nepal) and other indigenous peoples of the Terai lost control over their ancestral land after the eradication of malaria in the early 1950s. They also lost their traditional social and political structure with the introduction of the autocratic party-less Panchayat system in 1960.

The Limbus of the eastern Hills of Nepal were the last IPs to lose the Kipat, or the indigenous land

tenure system. The district profile of Kanchanpur reveals that the Tharu Chaudhary occupied 82% of the land some 50 years ago. Now they have only 16% (DDC profile).

The government of Nepal has a less than satisfactory track record of implementing international conventions protecting IP rights.

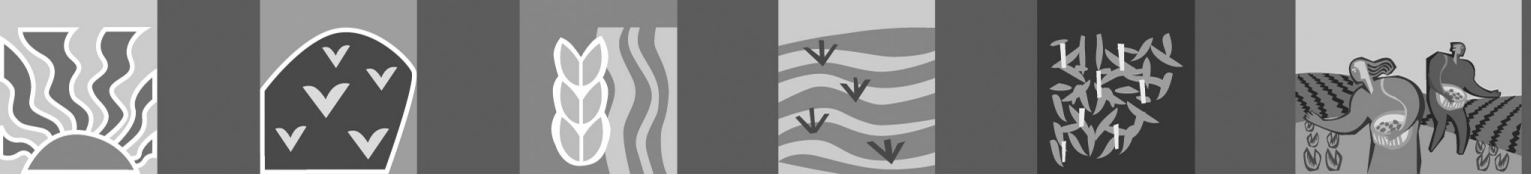
Nepal still needs to implement ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and change existing laws and policies to give due recognition to the indigenous peoples' traditions, customs and land tenure systems.

The existing legislative and policy frameworks for equitable sharing of costs and benefits concerning protected areas in Nepal are inadequate. Growing public protests and local movements in buffer zone areas of Nepal are evident to this end.

Although the government invited a Special Rapporteur on the rights and freedoms of indigenous peoples to Nepal, his recommendations, along with the programs and provisions of the Durban Declaration and Program of Action (DDPA), have yet to be fully implemented.

Nepal's protected areas (including buffer zones) were established by government decrees without free, prior and informed consent by resident indigenous peoples and local communities. The government of Nepal does not legally recognize "indigenous and community conserved areas" as a designation of terrestrial or riparian management or as part of the national protected area system.

As a result of legal and institutional dynamics, indigenous communities around the country have been historically deprived of the lands



“Lack of access to natural resources exacts a particularly heavy toll on those indigenous communities that rely on traditional hunting and gathering practices for subsistence.”

and territories they have traditionally occupied or used, often without compensation. A major turning point in this process was the 1964 Land Reform Act, which nationalized land and terminated traditional collective land tenure systems such as the Kipat.

Without protection for communal lands, individual land holdings were gradually lost due to the absence of titles or insecure titles, abuse and corruption, lack of access to the justice system, and indebtedness.

The high degree of illiteracy among many indigenous groups, in particular the Tharus in the Terai, made them vulnerable to abusive practices and deceit. Displacement was also a cause of land loss during the armed conflict.

Lack of access to natural resources exacts a particularly heavy toll on those indigenous communities that rely on traditional hunting and gathering practices for subsistence. Communities that have traditionally relied on the forests but were not in possession of titles, or lacked resources to compete with private contractors, have lost access to their traditional forest lands.

Many Raji people, for instance, were deprived of their access to herbal medicine, honey-gathering and fishing. The Chepangs, who are traditionally hunter-gatherers and practice a nomadic way of life in the forests, are now under threat of eviction from their ancestral lands.

A case in point is the Chitwan National Park, the subject of a communication sent by the previous mandate holder in 2007 (Anaya, 2008:61). The park was established in 1971 in areas traditionally used and inhabited by the Tharu, Majhi, Bote, Darai and other communities who were displaced to the park’s buffer zone. Even though these communities now enjoy limited access to fishing and other traditional occupations, many individuals displaced from the park area still remain landless and have not been provided alternative livelihoods nor compensation.

The existing benefit-sharing mechanisms are ineffective. A major obstacle in this regard seems to be the composition of the Chitwan Buffer Zone and District Development Committees, in which indigenous peoples are insufficiently represented. Maltreatment, arbitrary detention and sexual abuse of villagers by park rangers and military officials designated to patrol the park’s premises are commonplace. Lack of due process is further reported with regard to offenses dealt with by the Chief Warden, upon whom the National Park and Wildlife Conservation Act vests all law enforcement powers.

The mechanisms to compensate or consult indigenous communities are inadequate or non-existent. As a consequence of land loss and other systemic patterns of marginalization, indigenous people became bonded workers in private farms and wealthier households under the Kamaiya, Kamalari and other systems.



There are numbers of key actors and stakeholders that are directly involved in promoting/impeding IPs land rights in Nepal. They include: government, major political parties, local government, donor agencies and international institutions, the private sector, civil society organizations, NGOs, IP activists and IP-based organizations, and the media.

There are a number of international laws, treaties, and conventions that the government of Nepal has ratified which proffer the ground of enhanced opportunities in advancing the IPs' customary rights in Nepal. Besides this, national laws, acts, policies, programs, structures and mechanisms have also provided opportunities in enhancing IP customary rights.

Legal Framework of IPs' Land and Resource Rights

All indigenous peoples lost ownership and control over their ancestral lands by the 1960s because of the State's predatory land policies, such as Birta (the rulers gave ownership of land to individual Bahuns) and Jagir (land given in lieu of salary) and of the abolition of Kipat (communal/collective land ownership land tenure system) in Nepal (Regmi, 1976).

The land grant and assignment policy followed by the Gorkhali rulers and their descendants, Ranacracy and Panchayatcracy, favored particular classes and communities in the society to the exclusion of others. They tended to be concentrated for the most part among Brahmans, Chhetris and Thakuris, particularly from the western hill areas, who sustained the political authority of the new rulers.

Gurungs, Magars, Tamangs, and Newars generally did not receive such favors (Regmi, 1971). The

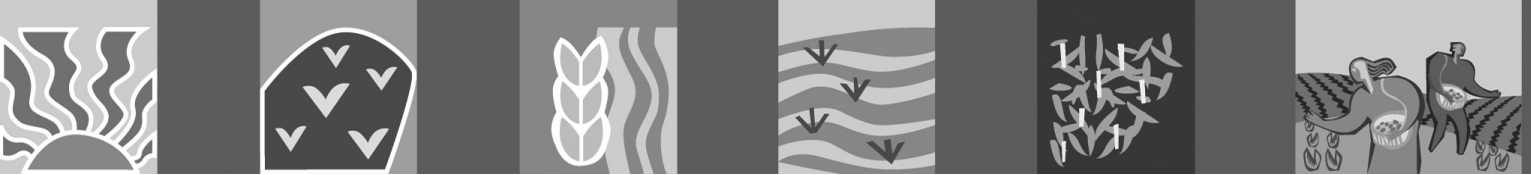
state made a feudal ruling class of landowners based on private property by confiscating the communal lands and forests of indigenous communities, whether they were in hill areas or Terai.

In 1964, a comprehensive series of land reform measures was announced by the government, with the intention of introducing programs such as land ceilings; confiscation of lands over and exceeding the land ceilings as well as uncultivated forest lands; tenancy rights; and the scrutiny of loans and credits in all areas of the Kingdom.

The Land Reform Act of 1964 became successful in converting the last Kipat tenures remaining with Limbus of eastern Nepal into Raikar tenure. At the end of 1968, the central government introduced an amendment to the Lands Act of 1964 which allowed for the sale of Kipat land and the assessment of these lands at the rates of tax equivalent to those prevalent on raikar. The Land Reform came and Kipat land became Raikar, as it seems that the rulers of Nepal were determined to abolish the Kipat system once and for all.

Indigenous Peoples began to lose their ancestral lands with the territorial unification of Nepal in 1769 through land tenure systems such as Birta and Jagir, and because of nationalization of the forests and the creation of national parks, wildlife reserves, protected land and community forest programs. Currently, personal landholding by indigenous peoples is lower than that of the dominant caste groups.

In Nepal all forests are national forests unless grown and registered as private forests. National forests include government-managed, community-managed, leasehold and religious forests. All forests inside PAs and those which



“Nepal’s natural resources, most importantly forest resources, began to deplete rapidly since the IPs lost control over these resources.”

have not been handed over as community forests (CFs), leasehold forests or religious forests are government-managed forests (GMFs). GMFs can be considered strictly protected and broadly managed inside the PA system.

Traditional rights to certain forest products (e.g. thatching grass in the Terai plains) are regulated for specified seasons under the strict supervision of PA staff. Indigenous communities inside and surrounding all PAs have suffered the loss of social and economic welfare and rights, including the loss of life.

Buffer zones around the PAs generally include human settlements, farmlands, common property lands and water bodies, as well as other natural capital upon which indigenous communities have traditionally depended for their livelihoods, cultural activities and recreation.

Basically two distinct types of exclusion due to community management of forests are clearly visible in Nepal. Firstly, the poor and socially disadvantaged within communities remain excluded from mainstream participation and decision-making, and from equitable sharing of benefits accruing from CF management. Landless forest-dependent people suffer the most under CF, as the local CF regulators generally tend not to recognize their traditional use rights (in the name

of the welfare of the majority in the community). Secondly, seasonal and remote traditional forest users are prohibited from exercising their traditional rights to forest use, and this has had serious negative impacts on livelihoods, especially among the high mountain communities. A third type of exclusion from traditional rights to forest use has been accelerated due to the rapid demographic changes caused by market injected urbanization.

Indigenous peoples of the Hills and the Terai regions, including Inner Terai, have lost their traditional political system and many parts and aspects of the traditional social structure.

Nepal’s natural resources, most importantly forest resources, began to deplete rapidly since the IPs lost control over these resources. In the absence of local alternatives, young people from some IPs groups are compelled to join foreign armed forces (India, Britain, Singapore, Brunei).

IP youths seek legal and illegal employment in the Middle East, North America, Europe and Southeast Asian countries.

Nepal’s laws and policies, in the beginning, seem to have granted the right to land, geographical areas and natural resources that fell under the Kipat system under indigenous peoples’ collective rights. After Acts, policies and rules started being formulated, especially with the objective of state management and conservation of forest and natural resources, communities started losing their collective right to develop, conserve, manage and control such natural resources.

In 1964/65, the promulgation of the Land Act seemed to have transferred the collective right over land to individual rights. Due to the then prevalent legal system depriving indigenous



peoples from their land and natural resources, they lagged behind in social, economic and cultural development. The situation is now gradually changing, with growing literacy levels and awareness in indigenous communities. The media is also gradually taking responsibility for voicing the concerns of civil society.

International law and standards on indigenous peoples' rights to lands, territories and resources are found in a myriad of international, regional and domestic instruments, decisions and policies.

Today, several international instruments recognize the strong ties that exist between indigenous peoples and their ancestral lands.

Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169)

The core concepts of the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169) are consultation, participation and self-management. These place a responsibility on governments to consult indigenous and tribal peoples and ensure that they fully participate at all levels of the decision-making processes that concern them.

ILO Convention No. 169 is a wide-ranging convention adopted by member states in Geneva in 1989 and intended to respect, protect and promote the rights of IPs. Implicit to it are a number of core principles. First is the understanding that IP rights are best protected by their participation at all levels of decision-making (Article 6). Second, is the principle of exercising control over development (Article 7).

The ILO Convention (Article 1) sees land as a fundamental criterion for the self-determination of indigenous peoples in their respective countries.

Article 1 also indicates that self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

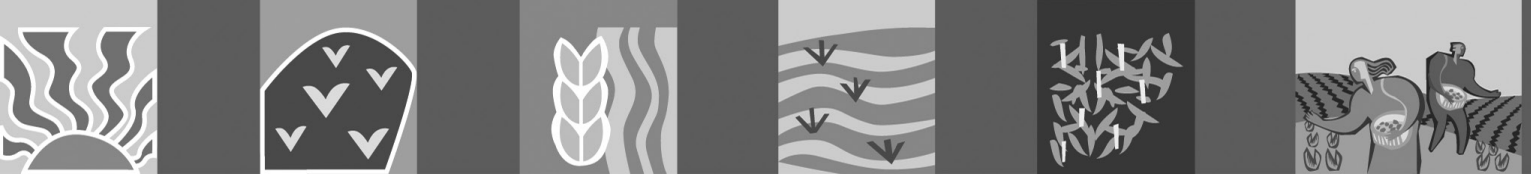
The Convention safeguards the rights of indigenous and tribal peoples (Article 2) to retain their social and cultural identity, customs, traditions and institutions. Articles 14 and 15 give special importance to the cultural and spiritual value attached to their lands or territories and to safeguard traditional rights of ownership and land use.

Similarly, Article 13 provides special importance to "cultures and spiritual values" and "collective aspects" of the peoples' relationship to their lands, and also interprets the term in a wide manner to include "the total environment of the areas."

Articles 13–15, for example, require that the state recognizes and legally guarantees indigenous peoples' rights of ownership and possession of their traditionally owned lands, territories and resources and requires that such guarantees are made effective in fact through demarcation, titling and the establishment of prompt and effective remedies through which IPs can assert and defend these rights in practice.

International Convention on the Elimination of All Forms of Racial Discrimination

Article 14 of this Convention makes a landmark provision relating to lands and natural resources: "The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied



by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.”

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

UNDRIP is a comprehensive list of rights of indigenous peoples. Article 25 recognizes the right of indigenous peoples “to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”

Article 26 emphasizes indigenous peoples’ right to “own, use, develop and control” lands, territories and resources.

Article 27 obliges the state to “recognize and adjudicate the rights of indigenous peoples” pertaining to their lands, territories and resources (again, including those that are traditionally and otherwise owned or occupied).

Article 28 addresses the issue of lands, territories and lands taken, used or damaged without the free, prior and informed consent of indigenous peoples.

Article 29 addresses the environmental, conservational and health aspects of indigenous peoples’ land rights.

The duty of states to obtain, or in some cases seek to obtain, indigenous peoples’ free prior and informed consent (FPIC) is clearly expressed in the UNDRIP, especially in relation to indigenous

peoples’ interests over lands, territories and resources (e.g., Articles 10, 19 and 32(2).) The UN Committee on the Elimination of Racial Discrimination’s General Recommendation XXIII (1997) (GRXXIII) recognizes the fundamental nature of indigenous peoples’ rights to maintain and develop the full spectrum of their relationships to their traditional lands, territories and resources.

Durban Accord

Indigenous issues were addressed in the other major outcomes of the Congress, notably in Outcome 5 of the Durban Action Plan and in The Durban Accords. Outcome 5 of the Durban Action Plan states that “The rights of indigenous peoples, mobile peoples and local communities [should be] recognized and guaranteed in relation to natural resources and biodiversity conservation” (IUCN, 2005:224). The Durban Accord recognizes the successes of indigenous and local communities in conserving biodiversity, as well as “their efforts to make protected areas places of natural, cultural and spiritual convergence” (IUCN, 2005: 221). A “Cause for Concern” is that “many places which have been conserved over the ages by local communities, mobile and indigenous peoples are not given recognition, protection and support” (Ibid). It urges “commitment to involve local communities, indigenous and mobile peoples in the creation, proclamation and management of protected areas” (IUCN, 2005:222), as well as more effective benefit sharing and support for CCAs.

The rights over lands and natural resources are enshrined by these international laws, each of which has been ratified by Nepal. The government is duty bound to incorporate these international laws in its national laws and implement them effectively.



However, the general feeling amongst most activists is that there is a lack of political will to implement these laws. There is a compulsion to maintain the status quo and serve the interests of the powerful elite.

The period covered by the Tenth Plan is close to conclusion and many of the provisions have yet to be implemented. New towns continue to emerge on fertile agricultural land and there is ever increasing land fragmentation. The Government of Nepal, the National Land Rights Forum (NLRN) and the National Land Rights Concern Group (NLRNG) jointly signed an agreement on 14th September 2006 to form a high level commission on land reform, which to-date has yet to be formed.

2006 witnessed massive political upheaval in the country. Maoist rebels fighting for a People's Republic forged an alliance with the parliamentary parties under a constitutional monarchy. The Comprehensive Peace Accord (CPA) signed between the Nepali government and CPN (Maoist) on 21 November 2006 agreed:

- to adopt the policy of implementing scientific land reform and ending feudal land ownership; and
- to adopt the policy of managing economic and social security including providing land for slum dwellers, bonded laborers, Haliya, Haruwa, Charuwa and the economically impoverished.

Following the Peace Accord, the monarchy was suspended and a roadmap was set forth for a Constitutional Assembly with an Interim Constitution and a rebel-included Interim Parliament. The Interim Constitution 2007 made a commitment in Article 11 under the directive of economic-social transformation, which included the following two motions:

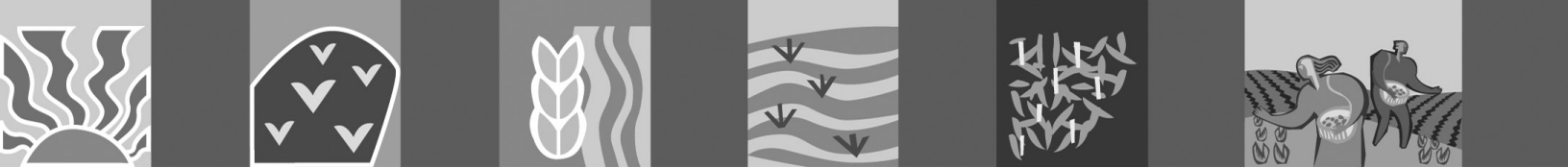
“All laws, including those on land and natural resources, have deprived indigenous peoples of ownership, control and use of their traditionally owned, controlled and used ancestral lands.”

-
- to end all facets of feudalism. Structuring and implementing the minimum common program by combined consensus for economic social transformation; and
 - to establish the rights of each citizen on education, health, settlement, employment and food security.

No significant change can be expected until a more stable government is in place. However, there exists a cross-party consensus on tackling land reform. The constitution of 1990 and the current Interim Constitution of Nepal of 2007 accept caste, ethnic, linguistic and religious diversities, but fall short of giving due rights to indigenous peoples. As a consequence, there has been no legislation specific to indigenous peoples.

All laws, including those on land and natural resources, have deprived indigenous peoples of ownership, control and use of their traditionally owned, controlled and used ancestral lands.

In 2002, the first law on indigenous peoples was passed. However, it was not about indigenous peoples' rights; rather, it was about the establishment of the Foundation for Development of Indigenous Nationalities. Although the



“Nepal has yet to implement the international standards applicable to indigenous peoples, as set out in the UNDRIP and Convention No. 169 and indigenous peoples’ rights to self-determination.”

foundation is an independent organization, its link with the Ministry of Local Development and its heavy reliance on the Nepal Government for money has turned it into one wing of the Nepal Government working as a bridge between the Government and the indigenous peoples. It has a mandate to implement programs for the development of indigenous peoples and also to make recommendations to the Government on measures to promote the social, economic and cultural development of indigenous groups.

Enforcement of the UNDRIP

In 2008, the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples in Nepal concluded that, despite significant improvements, the indigenous peoples continue to confront discriminatory social and political arrangements that originated in the past, and whose current manifestations impede their effective control over their lives and undermine their cultural identities. The Special Rapporteur highlighted that indigenous peoples have suffered gradual loss of traditional lands and access to life-sustaining natural resources, and that across the country, they rank low in all human development indicators. The Special Rapporteur

concluded that most indigenous communities live in conditions of poverty that, on the whole, are double or even greater the national poverty level and that adequate healthcare among indigenous peoples is lacking, as are opportunities for education.

Nepal has yet to implement the international standards applicable to indigenous peoples, as set out in the UNDRIP and Convention No. 169 and indigenous peoples’ rights to self-determination. The government needs to meet its obligations to indigenous peoples in line with observations and recommendations made by the Special Rapporteur.

Some of the major challenges in effective implementation of ILO 169 Convention in Nepal are presented below:

Dominance of Hindu High Caste: An effective implementation of ILO Convention 169 would require revision of existing laws that contradict various provisions of the Convention. In many cases, it also demands the promulgation of new laws. But the state government overwhelmingly dominated by so-called high caste Hindu groups is not ready to change the existing laws so easily. By the peoples’ movement of 2006, the regime has changed, but the rulers have remained more or less the same. They come from the same caste, same class, same region and same sex with same feudal mentality who are not only reluctant to implement the conventions but also resist change.

Rights to Self-determination and Ethnic Autonomy: Because indigenous peoples of Nepal do not trust the government to share power and implement international human rights conventions, they demand for their own rule through the transformation of state structure.



They demand that the state should be restructured into a federal system that recognizes and ensures ethnic and caste equality, linguistic and cultural rights and historical territories of the indigenous peoples with rights to self-determination.

Lack of Adequate Resources and Effective Mechanisms: The UN and other international agencies that promote these conventions do not have special funds nor do they have any effective mechanism to supervise and monitor the implementation of these conventions. ILO can only provide technical support, but it does not have its own resources. ILO depends upon other donor agencies for financial resources. Dependency naturally limits efficiency and effectiveness.

Lack of Political Will: Generating and transforming political will into action for the bureaucracy is another visible challenge for effective implementation of ILO Convention No. 169. As the political will is not in place, the weak bureaucracy is reluctant to duly implement the international commitment the government has ratified.

Lack of Mechanism: No mechanism is in place that specifically deals with the implementation of ILO No. 169. The National Foundation for the Development of Indigenous Nationalities (NFDIN), a semi-governmental organization that deals with development affairs of indigenous peoples has not been given the mandate to look after the implementation of the Convention and Rights of IPs.

Role of Mainstream Media: More than 90% of the mainstream media is dominated by the so-called Hindu high caste groups which often put indigenous peoples' issues in shadow and declare that "indigenous rights" are discriminatory and

«No mechanism is in place that specifically deals with the implementation of ILO No. 169.

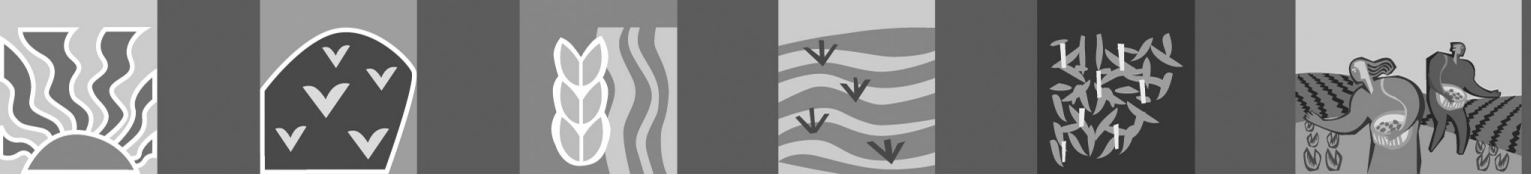
disintegrative for "the national unity."

Non-Support from the mainstream 'Civil Society': In theory, civil society is supposed to be pro-human rights, but in Nepal, civil society is controlled by the ruling social groups who also actively denounce indigenous rights in many ways.

Several NGOs and advocacy groups have also emerged in recent years. The Nepal Federation of Indigenous Nationalities (NEFIN), an umbrella organization of organizations representing the 59 indigenous nationalities, works towards the upliftment and empowerment of indigenous communities.

Similarly, different multilateral and bilateral organizations, INGOs, and NGOs are working in indigenous peoples' territories in the areas of conservation, sustainable development and sustainable livelihoods of people without respecting indigenous issues. There are no existing activities to address indigenous issues such as the Terai Arc Land (TAL) program of the World Wildlife Fund (WWF) Nepal, and the biodiversity translocation program of the International Centre for Integrated Mountain Development (ICIMOD).

Also, researchers and development workers are collecting indigenous information related with natural resources, biodiversity, traditional knowledge, skills, technologies, traditional life style, archaeological research without any legal frame (i.e., free prior and informed consent,



participation in decision making, censorships, co author and ownership of the products and mechanism of benefit sharing, and other ethical issues of indigenous peoples).

National Laws, Policies, Programs, Structures and Mechanisms

In recent years, there has been increased recognition of the multi-ethnic and multi-cultural character of Nepali society and the need for respecting this diversity for political stability and social progress. The Government has included specific references to rights and needs of indigenous peoples in a number of important legal and policy documents. These include the country's Constitution, special legislation, and references in core government planning documents.

Beginning with the Ninth Plan (1992-1997), the Nepal government fully recognized the presence of indigenous communities. Subsequent plans included increasing commitments by the Government to the all-around development and upliftment of indigenous nationalities. In 2000, the Government abolished the Kamaiya bonded-labor system, which mainly affected the indigenous Tharus. The Local Self Governance Act 1999 made special quota provisions for indigenous peoples in elected local bodies. In 2002, the National Foundation for the Development of Indigenous Nationalities (NFDIN) was established. NFDIN is an autonomous governmental body whose aim is to develop and empower the Indigenous Nationalities. Its activities focus on establishing district-based units to monitor indigenous/ethnic programs in 75 districts. However, these units never became operational.

For the welfare of IPs, the government set up a National Committee for Development of

Nationalities in 1997. The parliament passed a bill in 2002 for the formation of a National Foundation for the Development of Indigenous Nationalities, which came into existence in 2003. This foundation has been working for the preservation of the languages, cultures and empowerment of the marginalized ethnic communities.

The Three Year Interim Plan Paper (2007-2010) included the following policies for inclusive development of IPs and other disadvantaged groups: (i) creating an environment for social inclusion; (ii) participation of disadvantaged groups in policy and decision making; (iii) developing special programs for disadvantaged groups; (iv) positive discrimination or reservation in education, employment, etc.; (v) protection of their culture, language and knowledge; (vi) proportional representation in development; and (vii) making the country's entire economic framework socially inclusive. The NFDIN Act 2002, the National Human Rights Action Plan 2005, the Environmental Act 1997 and the Forest Act 1993 have emphasized protection and promotion of indigenous peoples' knowledge and cultural heritage. In 1999, the Local Self-Governance Act was enacted to give more power to the local political bodies, including authority to promote, preserve and protect the IPs' language, religion, culture and welfare.

Forestry

The forest is the main source of most indigenous peoples' livelihoods – providing energy, food, medicine, housing, earnings, fodder for livestock and compost for subsistence agriculture. Forest resources provide 81% of the total fuel supply and more than 50% of fodder for livestock. The forest is also one of the main economic resources of the country, contributing about 14% to national GDP. While revenue from non-timber forest products



(NTFPs), including medicinal herbs and aromatic plants, accounts for 5% of the total national revenue collected from the forestry sector, in certain areas NTFPs alone provide up to 50% of family income.

Forests are within PAs which have technical as well as armed manpower with guard posts at strategic locations and relatively strict instructions to enforce compliance with the law. Buffer zone management frameworks are geared towards creating natural capital and economic opportunities for communities that have lost traditional forest use rights inside PAs, but the issues and concerns of indigenous peoples and local communities have not been resolved properly, including their land rights, compensation for lost sources of income, needs and aspirations. For example, in the past, all parks and protected areas were under the control of indigenous peoples and local communities.

Since the establishment of national parks and PAs, people living within and adjacent to them have been deprived by the management of the collection of medicinal herbs, food materials, fuel wood, timber, fodder and grazing for their animals, which are an integral part of the IPs' lives.

Many places have been developed as urban centers, and parks are controlled by the military. Outside the PA system, GMFs in general suffer from a lack of the capacity and resources of District Forest Offices (DFO) that would be necessary for a reasonable level of management (except in cases where donor assistance has been available, such as in eight districts in central Nepal and four districts in the western region).

The majority of GMFs, especially in the mid and high mountains, have never been subject to any

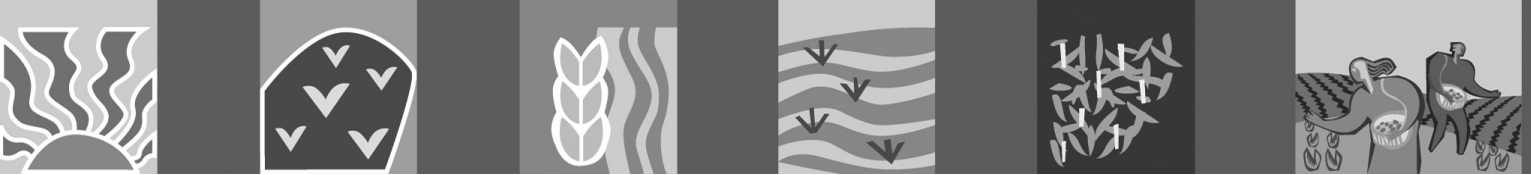
“Many places have been developed as urban centers, and parks are controlled by the military.”

management and protection initiatives since forests were nationalized in Nepal, and therefore face an “open access” situation unless they are handed over as CF or are managed and regulated by local communities traditionally dependent on them.

A widely recognized result of such an open access situation has been the rapid loss of various highly valuable medicinal and aromatic plants (MAPs) from forests. Indigenous communities in the past had practiced traditional methods of regulating the collection and harvesting of such MAPs, but because of the known markets and high prices, these MAPs are now subjected to indiscriminate over collection, which is threatening the resource base. Consequently, there has been a rapid loss of traditional knowledge and practices related to these MAPs.

Enforcement of National Laws, Policies, Structures, and Mechanisms

Some significant progress has been made at the national level in Nepal with regard to customary rights of IPs. This holds particularly true regarding legislative reforms and respecting people's collective rights to land. In many cases, these legislative reforms are a direct consequence of court decisions in favor of indigenous peoples and their demand for the recognition of their ancestral lands. While in other cases, these reforms correspond with changing international



standards. In all cases, these reforms are a direct consequence of indigenous peoples' resistance and demands that their rights be respected, protected and fulfilled.

In 2007 the government of Nepal ratified ILO Convention No. 169 on Indigenous and Tribal Peoples, becoming the first country in mainland Asia to do so, and also voted in the UN General Assembly to adopt the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). In early 2008 the government of Nepal agreed to create autonomous states based on ethnicity in at least some parts of Nepal, but what the federal map of Nepal will look like, which indigenous peoples will have autonomous states, and what governance authority will be delegated to them is not yet decided. Collective ownership of forests or rangelands by communities is not recognized in Nepal law. Prior agreements and promises to indigenous peoples recognizing communal lands (kipat) have not been kept and these were nationalized beginning in the 1960s. Large areas of such collective lands have been incorporated in protected areas and the national forest.

Indigenous peoples and other local communities do not have defined legal rights to the use of natural resources in the areas in which they reside, but some uses can be authorized by protected area administrators in some of the national parks and in buffer zones, as well as in the community forests within the national forest.

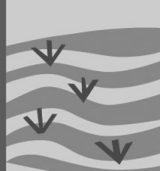
The National Parks and Wildlife Conservation Act of 1973 bans many customary natural resource activities including hunting and grazing. Very limited natural resource use (such as grass harvesting) is permitted in some national parks on a fee basis and subject to limited seasons and quantities. Protests by indigenous peoples have resulted in some increased access to natural

resources in several lowland national parks and wildlife reserves in recent years, but these concessions are not considered rights and in some cases have not been maintained for long. There is no recognition of an inherent right to use plants and animals in traditional religious activities in Nepal.

As a result of a number of legal and institutional dynamics, indigenous communities around the country have been historically deprived of the lands and territories they have traditionally occupied or used, often without compensation.

A major turning point in this process was the 1964 Land Reform Act, which nationalized land and terminated traditional collective land tenure systems such as the kiptat. The Act paved the way for the allotment and distribution of indigenous ancestral lands and, consequently, to the loss of IP's traditional land base. These dynamics were particularly dramatic in the southern plains, where lands traditionally controlled by indigenous communities were lost to migrants from the hill districts in the 1950s and 1960s.

Similarly, the Pasture Land Nationalization Act 1975/2031 B.S. nationalized traditional indigenous pasturelands, some of which were granted to commercial plantations, depriving many communities of their traditional livelihoods. This is the case of the Sherpas, whose traditional yak-raising has been endangered by the gradual loss of their traditional pasture lands. This situation has pushed them into cross-border grazing in Tibet, a practice which is in turn hindered by border policies. Protected areas, including national parks, now constitute approximately 20% of the total landmass in Nepal. Often these areas were created at the expense of indigenous lands. In the Himalayas, most of the land areas of the six existing national parks cover IPs' traditional lands.



The National Parks and Wildlife Conservation Act provides no recognition of indigenous peoples' right to consultation or to access their traditional lands and resources, while giving quasi-judicial powers to the park chief wardens.

There is no national legal basis for the identification and protection of sacred places or for assurance that indigenous peoples will continue to have access to and control over their management.

IP communities have lost their ownership of these with land nationalization. Villages often no longer have control over decisions about the protection of their sacred sites because new land management institutions in conservation areas, buffer zones, and community forests are based on regional, multi-village governance rather than on governance by individual villages.

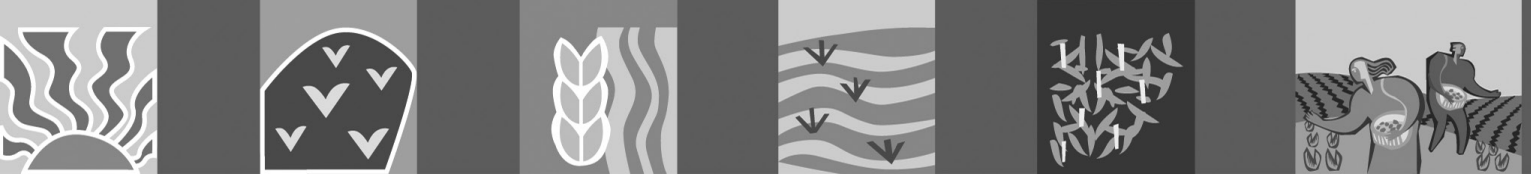
Land-loss and forced displacement over time has resulted in the dissolution of communities, the break-up of families, and the attendant lack of registration of many members of IP communities, making access to simple services such as health and education a challenge, if not an impossibility.

IPs in Nepal are lacking citizenship certificates, and the Government of Nepal has made notable efforts to remedy this situation. But according to the Office of the United Nations High Commissioner for Refugees (UNHCR) in Nepal, an estimated 800,000 individuals still lack citizenship registration and are therefore considered de facto stateless.

The action for claiming land rights in Nepal include: capacity development of activists and community leaders; formation and strengthening peoples' organizations; local level awareness;



Indigenous people of Haku, Rasuwa rally in Dhunch Rasuwa demanding for their land rights.
Photo by CSRC



people's initiatives for policy influencing; filing cases and receiving land ownership, and growth of the movement. For customary land rights of IPs, IP activists and IP-based organizations are taking important initiatives in Nepal.

Most of the forest dependent peoples such as Chepang, Danuwars, Majhis, Bote, Tamangs and policy makers are not aware of the international commitments related to traditional forest related knowledge (TFRK). Thus, policies, plans and programs are not made as per international commitments to achieve the goals set by the international community.

An awareness program regarding existence and importance of traditional knowledge of indigenous peoples should be launched through media. Effective measures should be implemented to recognize, respect, protect and maintain traditional knowledge. ■

References:

- Anaya, S. J. (2008). *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*. A/HRC/9/9/Add.1. UN-Human Rights Council. Retrieved from <http://unsr.vtaulicorpuz.org/site/images/docs/comm/2008-communications-a-hrc-9-9-add-1.pdf>.
- Central Bureau of Statistics (CBS). (2011). *National population and housing census 2011*. Vol. 1. Kathmandu: CBS-National Planning Commission Secretariat-Government of Nepal.
- Forest Monitor. (2015). *The Terai Forests*. Retrieved from <http://www.forestsmonitor.org/fr/reports/549391/549398>.
- His Majesty's Government of Nepal (HMG-N), National Planning Commission. (1998). *The Ninth Plan (1997-2002)*. Kathmandu: National Planning Commission, HMG-N.
- His Majesty's Government of Nepal (HMG-N), National Planning Commission. (2008). *Three Year Interim Plan of Nepal 2007-2010*. Kathmandu: National Planning Commission, HMG-N.
- ILO Convention 169. *Convention Concerning Indigenous and Tribal Peoples*. June 27, 1989.
- International Union for Conservation of Nature (IUCN). 2005. *The Durban Accord*. IUCN. Retrieved <https://portals.iucn.org/library/efiles/html/CD-033/English/grfx/products/durbanaccord.pdf>.
- Regmi, M. C. (1971). *A Study in Nepalese Economic History 1786-1846*. New Delhi: Manjusri Publishing House.
- Regmi, M. C. (1976). *Landownership in Nepal*. USA: University of California Press.
- Thapa, L. B., Dhakal, T. M. and Chaudhary, R. (2014). *Wild edible plants used by endangered & indigenous Raji Tribe in Western Nepal*. International Journal of Applied Sciences and Biotechnology (IJASB). Vol 2(3):234-252. Retrieved from http://ijasbt.org/vol_2/Thapa_et_al._2.3.pdf.
- The Interim Constitution of Nepal 2063 (2007). 15 January 2007.
- UN (1948), *Universal Declaration of Human Rights*. UN.
- UN. (2007). *UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples*. Report to the Fourth Session of the UN Human Rights Council, 27 February 2007. Retrieved from <http://www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm>.



UN Declaration on the Rights of Indigenous Peoples. 13
September 2007.

***For the complete list of references, please contact
the author of this study as indicated at the beginning
of this article.***