



# **VIOLATIONS IN THE NAME OF CONSERVATION**

“WHAT CRIME HAD I COMMITTED BY PUTTING MY FEET ON THE  
LAND THAT I OWN?”



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# 1. EXECUTIVE SUMMARY

For decades, conservation experts have praised Nepal for its efforts to protect wildlife and the natural environment. However, this has come at a high cost for forest-dependent Indigenous peoples. Among the communities most affected are the Tharu, living predominantly in the mid-western part, and the Chepang, Bote, Darai Banariya, Danuwar, and Majhi, living in the central part of the Terai lowland region in the south of the country.

This paper unpacks the failures of the Government of Nepal to uphold the rights of these Indigenous peoples, focusing on Chitwan National Park (CNP) and Bardiya National Park (BNP), the two largest national parks in the Terai region. Amnesty International and the Community Self-Reliance Centre (CSRC) documented the following human rights violations against Indigenous peoples: forced evictions; denial of rights to their ancestral lands; unjustified restrictions on access to the forests and natural resources on which they traditionally rely, amounting to a denial of access to food; arbitrary arrests, unlawful killings, detention and torture or other ill-treatment by the Nepal Army and National Park personnel protecting conservation areas, and the state's failure to provide effective remedies to the Indigenous peoples for the many rights violations against them.

## 1.1 PROTECTING ANIMALS, EVICTING PEOPLE

Nepal made a commitment when it ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO) (hereafter, ILO Convention 169) in 2007 to protect Indigenous peoples' sources of livelihood and access to natural resources. However, the reality is very different. A 2019 National Human Rights Commission (NHRC) report found that Nepal had up until then failed to properly implement ILO Convention 169. Activists working in areas where many forest-dependent Indigenous peoples live, complain that the government's conservation approach has become lopsided, ignoring Indigenous peoples' rights as guaranteed in ILO Convention 169 and set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

There are many factors which have influenced the plight of Indigenous peoples: flawed legal provisions with respect to natural resources (such as providing immunity from prosecution for officers who have 'no alternative' but to shoot anyone breaching provisions of the National Parks and Wildlife Conservation Act, even if he or she dies), a narrow interpretation of these provisions by the courts and authorities in favour of national parks and to the detriment of Indigenous peoples, lack of proper documentation of the harms suffered and lack of consistent and concrete efforts by the authorities to provide redress.

The denial of access to traditional resources for food, shelter and herbal medicine by virtue of the restrictive conservation laws (National Parks and Wildlife Conservation Act, Forest Act, Water Resources Act) has had a particularly heavy toll on those indigenous communities that rely on traditional hunting and gathering practices for subsistence.

## 1.2 ANCESTRAL HOMELANDS HAVE BECOME NATIONAL PARKS

National parks and other “protected areas” cover almost one fourth of Nepal. The country has 12 national parks, one wildlife reserve, one hunting reserve, six conservation areas and 13 buffer zones (areas designated by law to provide local people with facilities to use forest resources on a regular and beneficial basis). Almost all of these protected areas have been created in the ancestral homelands of Nepal’s Indigenous peoples. Decades after their establishment, many Indigenous peoples who were evicted from their ancestral lands have remained landless and been living in informal settlements, where they have continued to be at risk of further forced evictions. They have not been provided alternative livelihoods or compensation and have been denied access to protected areas for fishing, grazing and for gathering food, medicinal herbs and firewood.

The Government of Nepal cannot ignore its obligation to guarantee the rights of the Indigenous peoples to the natural resources and lands used by them, often for generations. The Government also cannot bypass its obligation to bring conservation laws, including those governing national park and buffer zones, in line with ILO Convention 169 and provisions in the 2015 Nepal Constitution which guarantee “rights related to food”.

## 1.3 HUMAN RIGHTS VIOLATIONS BY THE NEPAL ARMY

Some of the human rights violations committed against the Indigenous peoples documented in this report are linked to the Nepal Army. Some 6,778 Nepal Army personnel are stationed in Nepal’s protected areas. There appears to be a gap in the domestic legal framework which has not clearly regulated the Nepal Army’s powers to arrest and detain people and use lethal force in national parks and other protected areas in line with human rights standards.

The Nepal Army and park authorities frequently arrest and detain Indigenous peoples for entering the national parks and reserves. Many of them have faced ill-treatment, even torture, at the hands of army personnel deployed in the parks. Some have died as a result.

People in the Tharu community in Geruwa, Bardiya district complained about the discriminatory treatment and harassment by Nepal Army officials. Women who live near the parks are particularly vulnerable to human rights violations as they enter the forest daily to collect fuelwood and fodder. Though reports of excessive use of lethal force by the Nepal Army have reduced over recent years, there are still regular reports of torture (sometimes resulting in death), rape and other crimes under international law, and human rights violations.

## 1.4 EVICTION IS NOT THE ANSWER

Article 8 (2) of the UNDRIP requires States to provide effective mechanisms for prevention of and redress for any action which has the aim or effect of dispossessing Indigenous peoples of their lands, territories or resources. Article 10 of UNDRIP further guarantees Indigenous peoples’ right not to be forcibly removed from their lands or territories and for no relocation to take place without the free, prior and informed consent of the Indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Furthermore, Article 46 (2) requires that any limitations of the rights in the declaration (including the rights to their lands, territories and resources) “shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.”

Research (by Indigenous peoples and local communities) into co-managed and community-owned conservation areas shows they have on average more success in achieving conservation outcomes than protected areas that are exclusively state-run.

The government has to demonstrate that the eviction of Indigenous peoples at the time of the creating of national parks was necessary in order to achieve conservation goals, and that their continued exclusion from the parks is still required.

The law states that buffer zone residents whose houses and lands fall inside the boundary of a national park as a result of flood or a landslide are eligible for compensation. However, people living in the buffer zone of BNP have yet to receive compensation for the loss of land 40 years or more since they lost access to their land. Among them is a large group of people in Geruwa Municipality, whose land was considered to be part of the BNP after floods in the early 1980s.

Consultations must be held regarding a remedy for the violation, and the option of return to the park must not be ruled out, unless the government can convincingly demonstrate that there are compelling reasons of national interest that militate against that, in line with the rights set out in the UNDRIP. For many in Bardiya, return of their lands is paramount, but in the event that this is not possible, compensation for loss of land must reflect the value of the land they have lost.

The restrictions on fishing, gathering food, medicinal herbs and firewood in place have severely impacted and dramatically altered Indigenous peoples' way of life. Apart from those living in buffer zones with access to buffer zone forests, Indigenous peoples are barred from visiting national parks. This has left already deprived peoples to fend for themselves and pay costs they can ill afford for, for example, tin instead of thatched roofs or conventional instead of herbal medicines, potentially resulting in food insecurity and health and housing issues.

For people living around national parks, growth in wildlife population has meant destruction of their crops and infrastructure, loss of livestock, and sometimes human injury and loss of life. In BNP the population of protected animals such as tiger, rhino and elephant has increased over the years. Farmers in Bardiya complained about protected wild animals frequently destroying their crops, stored grains, farm animals and structures, including houses. They feel the state has failed to protect their right to food. It has also violated their right to remedy as the relief provided is nominal, the procedure is cumbersome, there are long delays in verification and payment of relief (it is distributed once a year) and it excludes relief for recurring destruction by certain types of animals (for example, monkeys).

Due to lack of alternative livelihoods, financial hardship and inability to meet household costs, many Indigenous peoples evicted from their land have been compelled to become sharecroppers (*bataiya*), that is they cultivate other people's land in return for 50 percent of the harvest.

## 1.5 CONSULTATIVE, DURABLE SOLUTIONS ARE A MUST

In order to pave the way for an effective remedy for the human right violations suffered by the Indigenous peoples, a survey is urgently needed to ascertain the amount of land lost by each household, thereby providing a solid ground for redress.

The then government set up a new "Land Issues Resolving Commission" (LIRC) in March 2020 with a mandate to identify "landless dwellers" (defined as people without registered land ownership) and "unmanaged dwellers" (people who have some registered land, but are squatting on government land). As of early July 2021, the LIRC has signed memoranda of understanding with 743 local governments (out of 753 local authorities in the country). They have also appointed local and district-level facilitation committees to monitor the work of the municipalities. Under the governing law, these comprise nine members and have to include three women, of which one belongs to a Dalit community, but do not explicitly include representation for Indigenous peoples. These committees began their work in late 2020. Any appeals against the local committees' decisions will be to the relevant district-level committees. In a meeting with Amnesty International and CSRC on 4 April 2021 the Chairperson and other members of the Commission said they were aware of the displacement of forest-dependent Indigenous communities and families due to the creation of National Parks, and committed to consult with the Government of Nepal to ensure alternative housing and land is provided, respecting Indigenous peoples' rights to their traditional ways of life and their wish to not be relocated far from their traditional land.

As this report was being finalized, the new government under Prime Minister Sher Bahadur Deuba terminated the mandate of the Commission.<sup>1</sup> As of the end of July 2021, the commission had received 1.18 million applications, including 247,960 from "landless dwellers" and 932,801 from "unmanaged dwellers".<sup>2</sup> No reasons were given for the termination of the commission.

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<sup>1</sup> Kantipur, *Land Commission dismissed*, 4 August 2021, <https://ekantipur.com/news/2021/08/04/162804340224291748.html>

<sup>2</sup> Kantipur, *Land Commission dismissed*, 4 August 2021, <https://ekantipur.com/news/2021/08/04/162804340224291748.html>

## 1.6 LIMITED POLITICAL WILL

Though the responsibility for national parks lies with the federal government in the 2015 Constitution, in interviews with officials at capital level, it became clear that there is limited political will to provide an effective remedy to forest-dependent Indigenous peoples affected by protected areas' policies. At the local level, elected officials were showing some political will, but were struggling to understand the legal and policy powers and resources available to them. In addition, National Park authorities report to the national authorities only and are therefore not accountable to the local authorities, let alone to the affected Indigenous peoples.

With the work of the Commission only starting and the Government of Nepal still in the process of adopting new laws to delineate the authority and responsibilities under the federal structure adopted under the 2015 Constitution, there is an opportunity to address the longstanding concerns of the Indigenous peoples affected by conservation-related evictions.

Amnesty International and CSRC are making the following key recommendations:

1. To the federal government:
  - a) Amend the legal framework governing the country's conservation efforts, to guarantee the rights of Indigenous peoples to participate fully in the management of conservation initiatives on their lands, and ensure their right to free, prior and informed consent with regard to all initiatives affecting their human rights;
  - b) The National Parks and Wildlife Conservation Act (NPWCA) should be revised, if not replaced entirely, to ensure that governance of protected areas is genuinely participatory in line with the Constitution of Nepal;
  - c) Organize a process enabling genuine consultations with Indigenous peoples on an appropriate remedy for the violations of their rights, not ruling out the option of return to their ancestral lands in the protected areas. The only exception should be if the government can convincingly demonstrate that there are compelling reasons that are non-discriminatory and strictly necessary. Necessity means that it should be solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society;
  - d) Ensure unfettered access to land that is now inside National Parks by people who had been occupying/cultivating this land but lost it to national parks due to floods and changes to the river's courses;
  - e) The Government of Nepal should provide all those who lost their homes and lands due to the establishment of National Parks and other protected areas, or related issues (such as flooding causing their land to become incorporated into conservation areas) and who cannot or choose not to return to their ancestral lands with adequate alternative housing and land, which is sufficient to guarantee an adequate standard of living and sustainable livelihoods without distorting their traditional ways of life;
  - f) Buffer zone committees and local and district-level facilitation committees that form part of the LIRC work should be made more representative and inclusive. All avenues should be explored to ensure that Indigenous peoples, women and marginalized communities, who are most affected by the national parks, have adequate and effective representation on the committees. Efforts must be made to ensure that representation is not limited to tokenism, and that women, Indigenous peoples and members of other marginalized communities are not only included in the committees, but are provided the necessary support to participate meaningfully in decision-making;
  - g) Review the process of receiving compensation for damage to crops and other property by wildlife to make it more effective and ensure that compensation for loss of land or damage to crops and property is not dependent on individual national parks' revenues. Providing crop insurance to farmers who live around the park would be a possible measure to mitigate this problem;
  - h) Ensure prompt and independent criminal investigations into all human rights violations committed by the Nepal Army and Park authorities in the context of enforcing conservation laws and, if there is sufficient admissible evidence, prosecute them in fair trials before ordinary civilian courts, in accordance with human rights standards of due process.



2. To the Ministry of Forests and Environment, the Department of National Parks and National Park Offices:
  - a) Put in place measures to protect lives, crops, livestock, and property especially in the buffer zones and villages around protected areas from wild animals.
  - b) Ensure timely assessment of damages and adequate compensation against damage and destruction of crops, livestock, property and human life by protected wild animals;
3. To any future land-related commission:
  - a) Ensure the criteria for identification and verification of data in respect of Indigenous peoples' right to land, the rights of people who lost their land due to flooding and rivers changing their course are considered and make these data available to those affected and their representatives for consultation before making decisions regarding land allocation;
  - b) Ensure the independent and impartial functioning and decision-making of the local and district-level facilitation committees, including by creating a mechanism allowing appeals against identification of eligible households and land allocation decisions to the Commission at the central level, with the assistance of a local official designated to facilitate the appeal, where necessary.

# 2. METHODOLOGY

The research for this report was done jointly by Amnesty International, Community Self-Reliance Centre (CSRC) and community-based land rights activists, including many from the Tharu community, using a community-based participatory action research approach from May 2018 to September 2019.

A five-day methodology training-cum-workshop on Community-based Participatory Action Research (CPAR) was organized in Thakurdwara, Bardiya district, for all field researchers. There were 15 participants, including ten Tharus and five non-Tharus from the same locality, who had research experience and could speak the Tharu language. Eleven of the participants were women, nine of whom were from the Tharu community. This course was designed to train and empower the community-based researchers to carry out CPAR. Three Amnesty International and CSRC resource persons facilitated the training and others from the community provided an orientation on historical marginalization of Tharu.

Field-based research was conducted in Bardiya district in Lumbini Province and Chitwan district in Bagmati Province. Amnesty International and CSRC researchers and local activists conducted individual interviews with 27 members of the Tharu community facing problems in accessing their land in Bardiya and Chitwan districts and consulted more than 50 farmers and community activists during 11 focus group discussions (FGDs). In addition, 31 government officials at central, provincial and local level and 46 land rights activists, rights experts, civil society organizations' representatives, journalists, parliamentarians, landlords and representatives of the United Nations (UN) and other international organizations were interviewed.

The organizations also analyzed a significant number of relevant documents (including land ownership certificates, administrative/executive decisions and court decisions) obtained from Tharu farmers and the authorities.

Amnesty International-Nepal has been monitoring human rights violations committed by the Nepal Army and national park authorities against Indigenous peoples and local peoples in the context of the government's conservation efforts. It conducted remote interviews with Chepang Indigenous peoples evicted from their homes as well as municipal and national park authorities in Chitwan district in mid-2020. It also gathered information from the Nepal Army and Nepal Police regarding the investigation into reports of ill-treatment and torture of Chepang community members arrested by the army for entering the Chitwan National Park.

In light of the Covid-19 pandemic, and the Nepal Government's declaration of a lockdown in March 2020, the more recent research was desk-based, and any interviews were conducted through telephone and internet-based applications, rather than field visits.

## 2.1 ACTIONS SUPPORTED BY THE RESEARCH

Using the empirical evidence, on 25 July 2019, a delegation comprised of Amnesty International-Nepal, Justice and Rights Institute-Nepal (JuRI-Nepal), CSRC and National Land Rights Forum submitted a letter to Padma Kumari Aryal, the then Minister for Land Management, Cooperatives and Poverty Alleviation to act on the violation of the rights of Tharu people in Bardiya district, and urging her to allow them to have unhindered access to land which had shifted into the BNP due to the change in the course of the Geruwa river.

Around the same time, a delegation met with Prakash Osti, then Commissioner of the National Human Rights Commission (NHRC) and submitted a memorandum urging the NHRC to monitor and investigate the

situation and make recommendations to the Government as appropriate regarding the affected Tharu peoples' access to land.

In close consultation with partners, Amnesty International published three separate briefings containing detailed legal analyses as and when the Government tabled new laws in Parliament to operationalize economic, social and cultural rights (ESCRs) guaranteed in the 2015 Constitution. They were: 'Right to food in Nepal: Analysis of the Right to Food and Food Sovereignty Act 2018' (April 2019),<sup>3</sup> Adequate Housing for All: Analysis of the Right to Housing Act 2018 (June 2019),<sup>4</sup> Land for Landless Peasants: Comments and recommendations on amendment to the Lands Act 1964 (October 2019).<sup>5</sup>

The joint research was also used in the filing of a Public Interest Litigation (PIL) petition in the Supreme Court in July 2020 in respect of forced evictions.<sup>6</sup> The litigation aimed at securing a judicial intervention to prevent future forced evictions and remedy the violations already committed against Indigenous peoples, including the Chepang, in Madi, Chitwan district.<sup>7</sup> At the time of writing the report, the judgement on this was awaited.

This reported has been updated as of 4 August 2021.

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<sup>3</sup> Amnesty International, *Nepal: To end hunger, strengthen and implement right to food law*, 4 April 2019, [www.amnesty.org/en/latest/news/2019/04/nepal-to-end-hunger-strengthen-and-implement-right-to-food-law/](http://www.amnesty.org/en/latest/news/2019/04/nepal-to-end-hunger-strengthen-and-implement-right-to-food-law/)

<sup>4</sup> Amnesty International, *Nepal: Adequate Housing for all: Analysis of the Right to Housing Act 2018*, (Index: ASA 31/0496/2019), 11 June 2019, [www.amnesty.org/en/documents/asa31/0496/2019/en/](http://www.amnesty.org/en/documents/asa31/0496/2019/en/)

<sup>5</sup> Amnesty International, CSRC and JuRI-Nepal, *Nepal: Land for landless peasants: Comments and recommendations on amendment to the Lands Act 1964*, (Index: ASA 31/1221/2019), [www.amnesty.org/download/Documents/ASA3112212019ENGLISH.pdf](http://www.amnesty.org/download/Documents/ASA3112212019ENGLISH.pdf)

<sup>6</sup> Raju Prasad Chapagai and others vs Government of Nepal, Office of the Prime Minister and Council of Ministers and others, writ petition no 2077-WO-0038.

<sup>7</sup> Kathmandu Post, Writ filed at Supreme Court seeking its intervention to step forceful evictions of people from different places, 27 July 2020, [www.kathmandupost.com/national/2020/07/27/writ-filed-at-supreme-court-seeking-its-intervention-to-stop-forceful-evictions-of-people-from-different-places](http://www.kathmandupost.com/national/2020/07/27/writ-filed-at-supreme-court-seeking-its-intervention-to-stop-forceful-evictions-of-people-from-different-places)

# 3. BACKGROUND

## 3.1 HISTORICAL CONTEXT

The Terai lowland region in the south of Nepal covers about 17 percent of the country but is home to around half of the country's population.<sup>8</sup> Many Indigenous peoples<sup>9</sup> such as the Tharu, Chepang and Sonaha have been living in and around the dense forests of the Terai since before the formation of the Nepali state. Traditionally, they lived by hunting, fishing, shifting cultivation and collecting wild vegetables and medicinal plants.

According to Mahesh Regmi, a widely respected expert, the land tenure and taxation system established after Nepal's unification in 1789 had a drastic impact on these peoples. The high-caste Shah and Rana rulers regularly granted large tracts of land to themselves and their relatives and supporters. These tax-free and inheritable lands were called *birta*. For example, Jung Bahadur Rana, who founded the Rana regime (1846-1951), granted himself as *birta* vast sections of present-day Bardiya, Kailali and Kanchanpur districts, which constitute the Tharu Indigenous peoples' heartland in the western Terai.<sup>10</sup> Another type of land grant, known as *jagir*, was made to military employees and government officials in lieu of salaries.<sup>11</sup> The customary territories of Indigenous peoples, including forest and grazing areas, thus gradually became the property of absentee landlords based in the capital, Kathmandu. The forests of Chitwan and Bardiya served as exclusive hunting grounds for the ruling elite.<sup>12</sup>

Academic research points to how burdensome taxes imposed by the state further contributed to the dispossession of Indigenous peoples. Tax was paid in the form of harvest and unpaid labour and collected by intermediaries who exploited people through land appropriation, arbitrary taxes and high-interest debt.<sup>13</sup> To escape the tax burden, many Tharu chose not to register their land, and as a result they had no land ownership documents.<sup>14</sup> Furthermore, the authorities failed to inform them of the consequences of not having land registration certificates.

The loss of Indigenous land and livelihood continued after the end of the Rana regime in 1951. Until then, people from other parts of Nepal rarely stayed in the Terai for a long time as the forests in the region posed a risk of malaria, to which the Indigenous peoples had developed a high level of immunity. From the late 1950s through the 1970s, the Panchayat government, with support from the World Health Organisation (WHO), carried out a large-scale malaria eradication program in the Terai and began to resettle hill migrants in the region. The resettlement program radically altered the social composition of the Terai. The fact that

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<sup>8</sup> National Population and Housing Census 2011, Central Bureau of Statistics, National Planning Commission Secretariat, Government of Nepal.

<sup>9</sup> Nepal has 59 legally recognized Indigenous Nationalities, referred to as Adivasi Janajati. They make up roughly 36 percent of the total population.

<sup>10</sup> Mahesh Chandra Regmi, *Thatched Huts and Stucco Palaces: Peasants and Landlords in 19th Century Nepal*, 1978, Vikas Publishing House Pvt Ltd, New Delhi.

<sup>11</sup> Mahesh Chandra Regmi, *Thatched Huts and Stucco Palaces*.

<sup>12</sup> Nina Bhatt, *Kings as Wardens and Wardens as Kings: Post-Rana Ties between Nepali Royalty and National Park Staff*, Conservation and Society, 2003, Volume 1, Issue 2, pp. 247-268.

<sup>13</sup> Mahesh Chandra Regmi, *Land Ownership in Nepal*, 1976, p. 118.

<sup>14</sup> Arjun Guneratne, *The Tax Man Cometh. The Impact of Revenue Collection on Subsistence Strategies in Chitwan Tharu Society*, Studies in Nepali History and Society, 1996, Volume 1, Issue 1, pp. 5-35.

most Tharu had not formally registered their land and had no landownership documents worked to their great disadvantage. Hill migrants who were better educated and knew how to navigate the system gained control of lands that were previously under the customary ownership of the Tharu and other Indigenous groups. Over time, the Tharu were reduced to working as tenants for landholders. Many fell into debt and became *kamaiya*, or bonded labourers. By the 1990s, tens of thousands of Tharu families in western Nepal were landless and working as *kamaiya*.<sup>15</sup>

## 3.2 NATIONAL PARKS GOVERNANCE

The advent of wildlife and forest conservation efforts in the 1970s further eroded Indigenous communities' access to their land and resources. Chitwan National Park (CNP) was established in 1973 soon after the enactment of the National Parks and Wildlife Conservation (NPWC) Act. Large numbers of Tharu who were living on land now designated as national parks were forcibly relocated to create the park, and the military was deployed to enforce restrictions on forest use.<sup>16</sup> In 1982 the royal hunting reserve in Bardiya was reclassified as a wildlife reserve. It was extended to include Babai Valley in 1984 when an estimated 1,500 more people relocated. The reserve was declared a national park in 1988.<sup>17</sup>

Today protected areas occupy roughly one fourth of Nepal.<sup>18</sup> They include 12 national parks, one wildlife reserve, one hunting reserve, six conservation areas and 13 buffer zones.<sup>19</sup> A buffer zone means a "peripheral area of a national park or reserve" prescribed under the NPWC Act "in order to provide facilities to use forest resources on a regular and beneficial basis for the local people."<sup>20</sup> Almost all protected areas lie in the ancestral homelands of Indigenous peoples.<sup>21</sup> These protected area categories vary according to their management regime.<sup>22</sup>

The NPWC Act 1973 remains the overarching law governing protected areas. The law restricts hunting, grazing, tree cutting, land cultivation or forest use, and bans all building in a national park or reserve. Prohibitions against forest use are particularly severe in national parks and reserves in the Terai, which is home to high-value forests and "flagship species" such as the Bengal tiger, the one-horned rhinoceros and the Asian elephant.<sup>23</sup>

The Department of National Parks and Wildlife Conservation (DNPWC) is responsible for the overall management of protected areas. The DNPWC office in each protected area is headed by a warden,<sup>24</sup> a government officer with the powers to arrest and detain people without a warrant.<sup>25</sup> Some 6,778 Nepal Army personnel are stationed in 13 protected areas across the country.<sup>26</sup> They have sweeping powers of surveillance and law enforcement in hundreds of communities that live near protected areas – yet their exact powers are not clearly defined by law. Nepal's Constitution empowers the government to "mobilize the Nepal Army in development, construction and disaster management works, as stipulated in Federal law."<sup>27</sup> Yet, the NPWCA, a federal law, does not refer to the Nepal Army or its responsibility in terms of security of national

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<sup>15</sup> Jagannath Adhikari and Hari Dhungana, *The State and Forest Resources: An Historical Analysis of Policies Affecting Forest Management in the Nepalese in the Nepalese Terai*, HIMALAYA, 2010, Volume 29, Issue 1.

<sup>16</sup> McLean, Joanne, *Conservation and the Impact of Relocation on the Tharus of Chitwan, Nepal*, HIMALAYA, 1999, Volume 19, Issue 2.

<sup>17</sup> Sudeep Jana Thing, Roy Jones, and Christina Birdsall Jones, *The Politics of Conservation: Sonaha, Riverscape in the Bardia National Park and Buffer Zone, Nepal*, Conservation and Society, 2017, 15(3), pp. 292-303, [www.conservationandsociety.org/article.asp?issn=0972-4923;year=2017;volume=15;issue=3;page=292;epage=303;aulast=Thing](http://www.conservationandsociety.org/article.asp?issn=0972-4923;year=2017;volume=15;issue=3;page=292;epage=303;aulast=Thing)

<sup>18</sup> According to the International Union for Conservation of Nature's definition, a "protected area is a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values." For more information, see [iucn.org/theme/protected-areas/about](http://iucn.org/theme/protected-areas/about)

<sup>19</sup> Department of National Parks and Wildlife Conservation, [dnpwc.gov.np/en/](http://dnpwc.gov.np/en/)

<sup>20</sup> NPWC Act, section 2(e2), [www.lawcommission.gov.np/en/archives/13505](http://www.lawcommission.gov.np/en/archives/13505)

<sup>21</sup> Stan Stevens, Neema Pathak Broome and Tilman Jaeger, *Recognising and Respecting ICCAs Overlapped by Protected Areas*, 2016 and Report for the ICCA Consortium, available online at [iccaconsortium.org](http://iccaconsortium.org)

<sup>22</sup> Sudeep Jana and Naya Sharma Paudel, *Rediscovering Indigenous Peoples' and Community Conserved Areas (ICCAs) in Nepal*, ForestAction Nepal, 2010.

<sup>23</sup> The national parks in the mountainous north of the country are governed by the Himalayan National Park Regulations, 1979, which recognize residents' rights to subsistence use of natural resources, though at the discretion of park wardens. See Stan Stevens, "National Parks and ICCAs in the High Himalayan Region of Nepal: Challenges and Opportunities, Conservation and Society, 2013, Vol 11, Issue 1, p. 35, [dlib.dlib.indiana.edu/dlc/bitstream/handle/10535/8843/ConservatSoc111129-4761032\\_131330.pdf?sequence=1&isAllowed=y](http://dlib.dlib.indiana.edu/dlc/bitstream/handle/10535/8843/ConservatSoc111129-4761032_131330.pdf?sequence=1&isAllowed=y)

<sup>24</sup> Also referred to as chief warden or chief conservation officer.

<sup>25</sup> Section 24, NPWCA Act. Until 2017 the NPWC Act also allowed the warden to issue judgements on cases and sentence suspects for up to 15 years in jail.

<sup>26</sup> Nepal Army website, Nepali Army Beyond Primary Duties, [www.nepalarmy.mil.np/page/bpd](http://www.nepalarmy.mil.np/page/bpd).

This is a small reduction in the total number of army personnel compared to 2014, when "7,627 army personnel [were] deployed in 138 outposts in 10 national parks, 3 conservation areas and 6 protected forests." See [www.nepalarmy.mil.np/viewnews/143](http://www.nepalarmy.mil.np/viewnews/143)

<sup>27</sup> Article 267 (4).

### VIOLATIONS IN THE NAME OF CONSERVATION

"WHAT CRIME HAD I COMMITTED BY PUTTING MY FEET ON THE LAND THAT I OWN"

parks. Rather, it entrusts the Nepal Government with a discretion to “make necessary arrangements”.<sup>28</sup> Equally, the 2006 Army Act contains no provision defining the military’s role in the security management of National Parks.

A recent study, however, in the buffer zone of Chitwan National Park (CNP) found that the Nepal Army’s role in conservation is expanding and the national parks are increasingly militarized.<sup>29</sup> Bishnu Prasad Shrestha, Warden of Bardiya National Park (BNP), told Amnesty International that the Army’s responsibility is primarily limited to patrolling side by side with National Park personnel, as designated by Government-endorsed “Standard Operating Procedures”.<sup>30</sup> If National Park laws are violated, their duty is to detain the perpetrator(s) and immediately hand them over to the National Park authority.

Use of weapons by army personnel is permitted. Article 24 (2) of the NPWCA gives “the authorized officer” the right to open fire at anyone suspected of committing a wildlife crime, “and if the offender or the accomplice dies as a result of such firing, it shall not be deemed an offence.” This violates the right to life guaranteed by the Nepal Constitution.

The respective national park official takes charge of all necessary legal proceedings in relation to any breaches of the NPWCA, while the Nepal police’s sole role is to carry out criminal investigations in general. Apart from the military, no other armed security guards are entrusted with the security of national parks.<sup>31</sup>

CNP and BNP are two of the most well-known protected areas of Nepal. CNP is a UNESCO World Heritage Site and the highest revenue generating protected area of Nepal.<sup>32</sup> Around 260,352 people live in the national park’s buffer zone, the majority of them Tharu.<sup>33</sup> Other Indigenous peoples such as the Chepang, Bote, Majhi and Musahar also live in the area. BNP is the largest protected area in the Terai and its buffer zone population is 114,201.<sup>34</sup> Apart from the Tharu, smaller Indigenous groups such as the Sonaha, Raji and Kumal also live in the park’s buffer zone.

### 3.3 BUFFER ZONES GOVERNANCE

From the standpoint of local people, buffer zone policy is coercive as it expands the authority of the warden to areas outside the park.<sup>35</sup> Buffer zone regulations allow local people restricted use of forest resources in the buffer zones. Each buffer zone has an elected buffer zone management committee (BZMC). However, the ultimate authority is the warden, who has the power to overturn the committee’s decisions and even dissolve the committee.<sup>36</sup>

The NPWC Act provides that 30–50 percent of the park revenue is allocated for development and conservation activities in the buffer zone, but studies show that such activities seldom address the priorities of Indigenous communities.<sup>37</sup> BZMCs in the Terai national parks are known to lack representation of Indigenous groups and women, who are most affected by park regulations.<sup>38</sup> Despite their deep knowledge of their environment and sustainable management of resources, Indigenous people have not been allowed to shape conservation policy.<sup>39</sup>

Section 5 of the NPWCA outlaws the following activities in national parks and reserves:

- Access for domestic animals or birds for drinking water or grazing;
- Hunting wildlife;
- Construction or ownership of a house, hut, shelter or any other structure of any materials;

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<sup>28</sup> Section 3B (1).

<sup>29</sup> Yogesh Dongol, Roderick P. Neumann, *State making through conservation: The case of post-conflict Nepal*, Political Geography, March 2021, Vol 85, p. 102327, [www.sciencedirect.com/science/article/abs/pii/S0962629820303905?via%3DIihub](http://www.sciencedirect.com/science/article/abs/pii/S0962629820303905?via%3DIihub)

<sup>30</sup> Conversation with Bishnu Prasad Shrestha, 13 October 2020.

<sup>31</sup> Conversation with Bishnu Prasad Shrestha, 13 October 2020.

<sup>32</sup> Hakahaki, *Protected areas report 58 percent surge in revenue*, 15 February 2018, [hakahakionline.com/en/804/protected-areas-report-58-percent-surge-in-revenue/](http://hakahakionline.com/en/804/protected-areas-report-58-percent-surge-in-revenue/)

<sup>33</sup> Chitwan National Park Buffer Zone Management Plan, 2013–2017.

<sup>34</sup> Bardiya National Park Buffer Zone Management Plan, 2016–2020.

<sup>35</sup> Joel T. Heinen and Jai Mehta, *Emerging Issues and Procedural Aspects of Buffer Zone Management with Case Studies from Nepal*, Journal of Environment & Development, March 2000, Volume 9, Issue 1, pp. 45–67.

<sup>36</sup> See sections 13 and 14 of the Buffer Zone Management Regulation, 1996.

<sup>37</sup> Thakur Silwal et. al., *Revenue distribution pattern and park-people conflict in Chitwan National Park, Nepal*, Banko Janakari, May 2013.

<sup>38</sup> Sangita Thapa, *Women and Woods: Reclaiming Equality in Resource Governance*, Journal of Forest and Livelihood, August 2016, Volume 14, Issue 1, pp. 28–40.

<sup>39</sup> Ramesh Kumar Sunam, Dipak Bishwokarma and Kumar Bahadur Darjee, *Conservation Policy Making in Nepal: Problematising the Politics of Civic Resistance*, Conservation & Society, 2015, Volume 13, Issue 2, pp. 179–188

- Occupation of any part of the land, uprooting of plants, cultivation or planting and cutting of the plantation;
- Chopping, lopping, dismantling and blocking of trees, plants and bushes; arson or causing loss of any kind to forest products;
- Mining, stone excavation, or extraction of mining resources, stones, boulders, soil or any other similar resources;
- Carrying or using arms, ammunition or poison.

These restrictions on fishing, grazing and collection of forest products have threatened Indigenous peoples' livelihood and cultural survival. Wild animals from the parks regularly raid crops and damage huts of people living in buffer zones. Many of them have lost access to their land after the park boundary shifted and encompassed their land after flooding. Others have faced forced evictions, harassment, sexual assault, arbitrary detention, torture and other forms of ill-treatment and unlawful killings by Nepal Army personnel and national park authorities.<sup>40</sup> As the cases documented in this report show, such human rights violations have continued in recent times, often without redress and remedy, in both CNP and BNP.

Further, a report by an independent panel published in November 2020 indicates that the World Wildlife Fund for Nature (WWF) and other international organizations have lacked a human rights-based approach to supporting conservation efforts. The research has highlighted the need for WWF in particular to revisit its approach towards the government's conservation efforts.<sup>41</sup> The independent panel set up by WWF in connection with alleged human rights abuses in and around protected areas in Nepal and other countries recommended that the organization adopt "an independent mechanism for reviewing and considering complaints made against the government, including protected area rangers and Army protection units, in respect of indigenous peoples' rights and access to local resources."<sup>42</sup> It also recommended that WWF Nepal should "advocate for reforms to end exclusion of marginalised communities and groups from buffer zone management bodies, and use its best efforts to ensure that current conservation actions and institutions represent and benefit all members of the communities."<sup>43</sup>

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<sup>40</sup> Jagannath Adhikari and Sharad Ghimire (editors), *Batabaraniya Nyaya: Srot Sangalo* [Environmental Justice: A Compilation of Sources], 2003, Martin Chautari, Kathmandu, Nepal.

<sup>41</sup> LAHURNIP and National Indigenous Women Federation, *Violation of Indigenous Peoples' Human Rights in Chitwan National Park of Nepal*, February 2020, [www.iwgia.org/images/publications/new-publications/2020/Violation\\_of\\_Indigenous\\_Peoples\\_Human\\_Rights\\_in\\_Chitwan\\_National\\_Park\\_of\\_Nepal.pdf](http://www.iwgia.org/images/publications/new-publications/2020/Violation_of_Indigenous_Peoples_Human_Rights_in_Chitwan_National_Park_of_Nepal.pdf) and a series of 2018 articles by Shradha Ghale, including *Men in Green*, 22 May 2018, available at: <http://kathmandupost.ekantipur.com/news/2018-05-22/men-in-green.html>. In addition to WWF, Shradha Ghale names the Zoological Society of London-Nepal, International Union for the Conservation of Nature and Natural Resources, USAID and others as lacking a human rights-based approach.

<sup>42</sup> Report of the Independent Panel of Experts of the Independent Review of allegations raised in the media regarding human rights violations in the context of WWF's conservation work, *Embedding human rights in nature conservation: from intent to action*, November 2020, p. 121, [wwfint.awsassets.panda.org/downloads/independent\\_review\\_\\_\\_independent\\_panel\\_of\\_experts\\_\\_\\_final\\_report\\_24\\_nov\\_2020.pdf](http://wwfint.awsassets.panda.org/downloads/independent_review___independent_panel_of_experts___final_report_24_nov_2020.pdf)

<sup>43</sup> Report of Independent Panel, p. 11.

# 4. HUMAN RIGHTS VIOLATIONS AGAINST LAND-DEPENDENT INDIGENOUS PEOPLES

## 4.1 LIVING WITH CONSTANT FEAR OF FORCED EVICTION

A large number of Indigenous peoples were evicted from their lands during the establishment of national parks.<sup>44</sup> Many have been living in informal settlements ever since. Some who have been living in buffer zones are denied access to natural resources and prevented from practicing their traditional occupations such as fishing, grazing, shifting cultivation and artisanal gold panning. Others have lost access to their land after repeated flooding caused their land to shift inside the national park boundary.

In Bardiya, Tharu farmers are being denied access to land that they have legally owned, lived on and/or cultivated for generations. With no provision of viable alternative housing or land, many of them have been reduced to informal settlers on public land.

Amnesty International and CSRC have documented several recent incidents of forced evictions and attempted forced evictions by national park authorities, including in Chitwan and Bardiya. Invariably, Nepal's international human rights obligations as well as new legal standards for eviction under the recently enacted Right to Housing Act have been ignored during these evictions.<sup>45</sup> As of April 2021, no regulations had been made to implement the Act's provisions.

### WHAT IS A FORCED EVICTION?

A forced eviction is the removal of people against their will from the homes or land they occupy without legal protections and other safeguards. The UN Commission on Human Rights has said that forced evictions constitute a gross violation of human rights, in particular the right to adequate housing.<sup>46</sup> A forced eviction does not refer to any eviction that occurs with the use of force by the state; it refers specifically to an eviction that occurs without complying with due process. The UN Committee on Economic, Social and Cultural Rights, a body of experts that provides authoritative guidance on the implementation of the International Covenant on Economic, Social and Cultural Rights, defines forced evictions as "the permanent or temporary removal against their will of individuals, families and/or

<sup>44</sup> UN General Assembly, Human Rights Council, 12th Session, 2009, Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, UN Doc A/HRC/12/34/Add.3, pp. 10-12, [undocs.org/A/HRC/12/34/Add.3%26Lang=E](https://undocs.org/A/HRC/12/34/Add.3%26Lang=E)

<sup>45</sup> Section 5(4) of the Housing Act 2075 BS (2019).

<sup>46</sup> Commission on Human Rights resolution 1993/77, para. 1.



communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection".<sup>47</sup>

Under international human rights law, evictions may only be carried out as a last resort, once all other feasible alternatives to eviction have been explored and appropriate procedural protections are in place.

Such safeguards include:

- An opportunity for genuine consultation with those affected;
- Adequate and reasonable notice for affected people prior to the eviction;
- Information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- Government officials or their representatives to be present during the evictions;
- Anyone carrying out the eviction to be properly identified;
- Evictions not to take place in particularly bad weather or at night unless the affected people consent;
- Provision of legal remedies;
- Provision, where possible, of legal aid to people who are in need of it to seek redress from the courts.

Governments must also ensure that no one is rendered homeless or vulnerable to the violation of other human rights as a consequence of eviction. Adequate alternative housing and compensation for all losses must be made available to those affected prior to eviction.<sup>48</sup>

## 4.1.1 CHITWAN NATIONAL PARK

CNP authorities forcibly evicted ten families from the Chepang community on 18 July 2020, during the monsoon season and the COVID-19 pandemic.

The Chepang are a marginalized Indigenous group who have been living in the forests of Chitwan for several generations. According to the 2011 census, their population is roughly 70,000. They are a semi-nomadic people whose primary livelihood activity includes hunting, gathering and shifting cultivation. Many of them are struggling to continue these practices in the current conservation context.<sup>49</sup> The majority of Chepang people are poor and landless and depend on foraging for food.<sup>50</sup>

The affected Chepang families told Amnesty International and CSRC that the park authorities set two huts ablaze and destroyed eight others at Kusumkhola, Ward 9, Madi Municipality, inside the CNP's buffer zone on 18 July 2020.<sup>51</sup> The families had been displaced due to floods and landslides in Makwanpur district in 2017 and had not been resettled since. Being forest dependent, they informally settled in the CNP buffer zone, but were not living within the boundaries of the park.

A 2017 report prepared by the municipality suggests that 160 landless families had informally settled in Kusumkhola. In 2018 and 2019 the municipality resettled most of them in a new housing site inside a community forest in Raitol Dada, Krishnanagar. Only the ten soon-to-be-evicted households were left in Kusumkhola.<sup>52</sup>

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<sup>47</sup> General Comment 7, para. 3.

<sup>48</sup> UN Committee on Economic, Social and Cultural Rights, The right to adequate housing, General Comment 7 on Forced Evictions, paras 15 and 16.

<sup>49</sup> Rai, N. K., *People of the Stones: The Chepangs of Central Nepal*, 1985, Kirtipur, Nepal, Centre for Nepal and Asian Studies, Tribhuvan University. See also: [www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS\\_083550/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS_083550/lang-en/index.htm)

<sup>50</sup> Government of Nepal, Ministry of Physical Infrastructure and Transport. February 2020. Final Report on Indigenous People Development Plan (IPDP) of Nagdhunga-Naubise-Mugling (NNM) Road and Bridges, Strategic road connectivity and trade improvement project (SRCTIP).

<sup>51</sup> Amnesty International-Nepal telephone interview with Chepang victim (name withheld), 20 July 2020.

<sup>52</sup> Kathmandu Post, Chitwan park authority accused of burning huts of landless squatters in Madi, 20 July 2020, [tkpo.st/3fQ9zgA](https://www.katipost.com.np/st/3fQ9zgA)

One of the victims of the attack told Amnesty International-Nepal that the park authorities first brought seven elephants to graze on the land they had been farming, damaging their maize crops.<sup>53</sup> Then they set fire to two houses and animal sheds and led the elephants to trample and crush the other houses. The ten families lost their homes and belongings, including money and identity documents.<sup>54</sup>

Gangamaya Chepang told Himalaya TV:

**“We asked them where we are supposed to go. We didn't have any blankets or mattresses. They pointed us to a school and said, ‘Go, sleep there’. We said we didn't have anything to wear. What are we supposed to eat? All our utensils were destroyed in the fire. They told us, ‘Don’t show us your tears’.”<sup>55</sup>**

After spending some nights in the school, those affected were living in temporary shelters built with tarpaulin sheets donated by NGOs near a river in Ward 9, not far from the area from where they were evicted. They were not given any government support or compensation.<sup>56</sup>

The CNP administration has denied allegations of vandalism and arson. “Some park employees and Nepal Army personnel had gone to the settlement to ask the villagers to evacuate the area. But they did not torch the huts as claimed by the locals. I was informed that some barns were dismantled... Settlements in Kusumkhola and some areas of Bandarjhula have been built by encroaching the park’s territory. We are reclaiming them,” said Narayan Rupakheti, the warden of the CNP.<sup>57</sup>

In response, the affected families told the media that they had been ready to move but were waiting for the dry season.<sup>58</sup>

Shiva Hari Subedi, chairman of Ward 9, said: “The ward office and the municipality have been searching for a suitable location to relocate the squatters but these things take time... The national park ... chose to give them one-week eviction notice at a time when the local communities, including the squatters, are trying to survive the pandemic and the disaster the rains bring.”<sup>59</sup>

Chitwan’s Chief District Officer (CDO),<sup>60</sup> Narayan Prasad Bhattarai, confirmed to the media that the park authorities took the action without informing local government officials.<sup>61</sup>

Amnesty International and CSRC found that the park had given the families a verbal notice only a week before the eviction, contrary to international standards and requirements under the new Housing Act.<sup>62</sup> According to local sources, the evictions had taken place against a background of disputes between the local authorities and the national park authorities regarding unauthorized logging of trees, the construction of huts and plans for a road that would pass through the national park.

In Amnesty International’s and CSRC’s assessment, the Kusumkhola incident is a clear case of forced eviction, carried out without first exploring all other feasible alternatives and without the appropriate procedural protections, such as adequate consultation, reasonable notice, presence of a government official, no adverse weather conditions, no adequate alternative housing or compensation offered (see also box

<sup>53</sup> AI Nepal communication with Dan Bahadur Praja, 20 July 2020.

<sup>54</sup> See INSEC report (Nepali only) available here: [insec.org.np/wp-content/uploads/2020/10/Kusum-Khola-Fact-Finding-Report-2077-Kartik.pdf](https://insec.org.np/wp-content/uploads/2020/10/Kusum-Khola-Fact-Finding-Report-2077-Kartik.pdf)

<sup>55</sup> Quote taken from Himalaya TV programme, *Chepang families in distress after park officials set fire to their homes*, 25 July 2020, [himalayatv.com/2020/07/25/6856/](https://himalayatv.com/2020/07/25/6856/)

<sup>56</sup> Conversation with Shivahari Subedi, Chairperson, Ward 9, Madi Municipality, Chitwan, 13 October 2020 and Govinda Chepang, former chair of Nepal Chepang Association, 16 October 2020.

<sup>57</sup> Kathmandu Post, *Chitwan park authority accused of burning huts of landless squatters in Madi*, 20 July 2020, [tkpo.st/3fQ9zgA](https://www.kathmandupost.com/local-news/2020/07/20/chitwan-park-authority-accused-of-burning-huts-of-landless-squatters-in-madi)

<sup>58</sup> Kathmandu Post, *Why current conservation models are flawed*, 23 July 2020, [tkpo.st/32Z3zPI](https://www.kathmandupost.com/local-news/2020/07/23/why-current-conservation-models-are-flawed)

<sup>59</sup> Kathmandu Post, *Chitwan park authority accused of burning huts of landless squatters in Madi*, 20 July 2020, [tkpo.st/3fQ9zgA](https://www.kathmandupost.com/local-news/2020/07/20/chitwan-park-authority-accused-of-burning-huts-of-landless-squatters-in-madi)

<sup>60</sup> CDO is the senior most representative of the federal government at district level.

<sup>61</sup> Onlinekhabar, *Ministry sends team to Chitwan to probe eviction of Chepangs*, 24 July 2020, [www.english.onlinekhabar.com/ministry-sends-team-to-chitwan-to-probe-eviction-of-chepangs.html](https://www.english.onlinekhabar.com/ministry-sends-team-to-chitwan-to-probe-eviction-of-chepangs.html)

<sup>62</sup> Right to Housing Act (2018), Section 5(4).

above). Contrary to international human rights standards, the affected families were also rendered homeless as a result of the eviction.<sup>63</sup>

Amid public outcry, the Ministry of Forests and Environment sent a three-member team to investigate the park authorities' actions.<sup>64</sup> As of April 2021, despite repeated requests, Amnesty International and CSRC had not been able to obtain information about the results of this investigation nor had they been made public.

On 21 July 2020, Amnesty International-Nepal issued a public statement condemning these forced evictions and calling for those responsible to be held accountable.<sup>65</sup>

A stay order issued by the Supreme Court<sup>66</sup> has meant the CNP authorities have so far refrained from further evictions. However, there are reportedly 4,000 more homes judged by the park authorities to have encroached on the national park. This raises concerns about possible future forced evictions.<sup>67</sup>

Meanwhile, objections from the national park office have forced Madi Municipality authorities to stop the construction of alternative housing located in the buffer zone. The Municipality has expressed serious concern over the national park's attitude and requested the Court to pave the way for unhindered construction of alternative housing for the evicted Chepang families.<sup>68</sup>

## 4.1.2 BARABARDIYA, BARDIYA NATIONAL PARK

In June 2020, amidst the Covid-19 lockdown enforced by the government, the BNP office arbitrarily issued a seven-day notice threatening 141 families living in the area (mostly from the Tharu community) to leave the forest area in Barabardiya Municipality, Bardiya, or face eviction.<sup>69</sup> They did so without verifying whether the families had access to alternative housing. After protests from local communities, an NHRC intervention with the municipal authorities<sup>70</sup> and filing of a PIL petition in the Supreme Court (see above), the eviction was prevented.

As of early April 2021, the families continue to live in the area. They await the outcome of the case pending before the Supreme Court. Amnesty International-Nepal and CSRC continue to monitor this situation.

## 4.1.3 MAGARADI, BARDIYA NATIONAL PARK

On 21 May 2017, the army stationed in Thakurdwara in the BNP set fire to the homes of more than 100 Tharu families living in an informal settlement in Jharniya, Magaradi Village Development Committee (VDC), destroying 105 homes. The community and human rights activists allege that the army took this action at the instigation of the local BZMC, with whom this Tharu community had had a dispute.<sup>71</sup>

After mediation between the army, the District Land Rights Forum (DLRF), and the community, the army agreed to let the community stay in the buffer zone, if it could be confirmed that these families were "real landless" and could provide a recommendation letter from any political party.

Based on this agreement, an all-party discussion was organized in Magaradi on 13 July 2017 with representatives from the forest management committee, ward citizen forums and local community leaders. Here a new committee was formed to identify the "landless dwellers" in the area. Subsequently, this committee identified only 64 households out of 105 as "landless dwellers" – despite electricity payment

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<sup>63</sup> UN Committee on Economic, Social and Cultural Rights, The right to adequate housing, General Comment 7 on Forced Evictions, paras 15 and 16.

<sup>64</sup> Right to Housing Act (2018), Section 5(4). For more details, see Law and Policy Chapter below.

<sup>65</sup> Kathmandu Post, *Amnesty condemns enforced eviction of indigenous Chepang families by Chitwan National Park*, 21 July 2020, [www.kathmandupost.com/province-no-3/2020/07/21/amnesty-condemns-enforced-eviction-of-indigenous-chepang-families-by-chitwan-national-park-authority](http://www.kathmandupost.com/province-no-3/2020/07/21/amnesty-condemns-enforced-eviction-of-indigenous-chepang-families-by-chitwan-national-park-authority)

<sup>66</sup> Kathmandu Post, *Writ filed at Supreme Court seeking its intervention to stop forceful evictions of people from different places*, 27 July 2020, [www.kathmandupost.com/national/2020/07/27/writ-filed-at-supreme-court-seeking-its-intervention-to-stop-forceful-evictions-of-people-from-different-places](http://www.kathmandupost.com/national/2020/07/27/writ-filed-at-supreme-court-seeking-its-intervention-to-stop-forceful-evictions-of-people-from-different-places)

<sup>67</sup> Kathmandu Post, *Why current conservation models are flawed*, 23 July 2020, [tkpo.st/3Z23zPI](https://tkpo.st/3Z23zPI)

<sup>68</sup> Written reply of the Madi Municipality in response to Supreme Court writ petition filed by Raju Prasad Chapagai and others (077-WO-0038). Copy received from the petitioners on 25 September 2020.

<sup>69</sup> Notice issued by the Bardiya National Park Office, Thakurdwara on 1 June 2020.

<sup>70</sup> Written submission made on 5 June 2020 by Raju Prasad Chapagai, human rights lawyer and Homendra Thapa, land rights activist, Bardiya to the Chairperson of the NHRC requesting the NHRC to monitor and investigate the case.

<sup>71</sup> Interviews with four villagers, October 2020. This area now falls under Barabardiya Municipality of Bardiya District.

receipts or *muchulkas* (sworn statements made in the presence of a local authority representative and other witnesses) submitted by all the families.

Following this dispute, the remaining 41 families of Jharniya had started living in temporary huts in another area, using their ancestral land only for farming.

#### 4.1.4 GERUWA, BARDIYA NATIONAL PARK

Officially, the western bank of the Geruwa, a tributary of the Karnali River, marks the western boundary of the BNP.<sup>72</sup> However, during monsoon floods the river regularly changes course, shifting the riverbank and bringing lands around the park inside the park boundary. As a result, many people who live near the park have lost access to their land.

Since the mid-1980s, national park authorities have barred at least 300 households (274 of them Tharu) of Wards 4 and 6 of Geruwa Rural Municipality alone from accessing their land in the buffer zone.<sup>73</sup> People from other Wards are known to also have been affected, though no exact data are available for them. The lack of due process followed by the authorities when denying these people access to their land, has resulted in their *de facto* forced eviction.

In 1983, at the time the Geruwa river functioned as the boundary of the Wildlife Reserve, more than a hundred households were displaced because of riverbank erosion after major flooding. Most of them first settled on unused land of a local Cotton Development Committee (*kapas*) office, but were evicted by the Nepal Army. They were forced to move to different places to sustain themselves.<sup>74</sup>

Keshav Khadka, who had taken shelter on the Cotton Development Committee's land in 1983, said:

**“Bardiya District Administration Office had sent us there. About 300 families started living there. After a few weeks, the Nepal Army used wild elephants to chase us away. I left that place after three months. Some families stayed for about six months and later moved to other parts of Bardiya district.”<sup>75</sup>**

Many of the families have since repeatedly been evicted from locations where they have tried to rebuild their lives in the absence of secure alternative housing or compensation provided by the authorities.

People currently living in five wards of Geruwa, especially Wards 4 and 6, have lost access to their land. According to Ward 4 officials, 144 households in the ward have lost access to their land between 1983 and 1989.<sup>76</sup> Of these households 96 belong to the Tharu community and the rest belong to other marginalized groups such as Magar (an Indigenous people) and Dalit.

According to a letter to the National Park Office sent by the Office of Ward 6, 151 households in that ward lost access to their land.<sup>77</sup> Of them 130 belong to the Tharu community. Unlike in Ward 4, most of the land lost by the people in Ward 6 was *ailani* (unregistered government land, i.e. land without recognition of ownership). Only 31 households (including 16 Tharu households) have landownership certificates, others living in Ward 6 have no documentation.<sup>78</sup>

The national park authority claims that the land falls inside the park boundary and therefore all restrictions under the national park laws apply to it, meaning people are not allowed to settle there or visit to collect

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<sup>72</sup> Nepal Gazette, 5 December 1988 that specified the boundary of the BNP as per Section 3 of the Act. Prior to that, it was conserved in the name of Royal Bardiya Wildlife Reserve.

<sup>73</sup> Amnesty International and CSRC are aware that other households in other wards of Geruwa Rural Municipality were also impacted, but were not able to gather more details.

<sup>74</sup> Nepal Gazette, 5 December 1988.

<sup>75</sup> Interview with Sher Bahadur Khadka, Ward 6, Geruwa, 11 July 2020.

<sup>76</sup> The list of the affected households in Ward 4 provided by the Ward Office, 12 May 2019.

<sup>77</sup> Interview with Tek Bahadur Chaudhary, chairperson of Ward 6, Geruwa, 23 August 2019.

<sup>78</sup> Letter no 2076/077 of 16 August 2019.

natural resources, or to “occupy, clear, reclaim or cultivate any part or grow or harvest any crop”.<sup>79</sup> During the field research, a wire fence was observed, barring entry to the national park area, including the area from where the people had been displaced after repeated flooding. There were also several CCTV cameras installed along the park boundary fence.<sup>80</sup>



↑ A wire fence barring entry at BNP at Ward No 4 of Geruwa Rural Municipality, including the area where people lost their land to the national park after the Geruwa river changed course

Despite not having had access to their land for decades, these Geruwa villagers have continued to pay *malpot* (land revenue tax).<sup>81</sup> They say they have done so to safeguard their access to the land and also because a *malpot* payment receipt is required to claim compensation for damage to crops (see below). Amnesty International and CSRC were shown several *malpot* receipts by the villagers.

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<sup>79</sup> Section 5 of the NPWCA.

<sup>80</sup> Kathmandu Post, *Bardia National Park counts on technology to protect its wildlife*, 22 October 2020, [tkpo.st/3mfQHdX](https://www.kathmandupost.com/news/local/Bardia-National-Park-counts-on-technology-to-protect-its-wildlife)

<sup>81</sup> Section 21: Remission of Land Revenue in case of Non-yielding of Crops Owing to Drought or Other Natural Calamity: (1) If the 40 major crops are destroyed in any area in any year owing to drought or hailstone or grass hopper or flood or any other natural calamity, the Land Revenue Office may, if it deems it necessary to remit land revenue fully or partly, upon holding necessary inquiry, make a submission, along with its opinion, to Government of Nepal. (2) If submission is made pursuant to Sub-section (1) or if Government of Nepal comes to know such situation in any manner, Government of Nepal shall remit such land revenue as may be deemed necessary. People living on *ailani* land often pay housing tax to the local government.

**गेरुवा गाउँपालिकाको कार्यालय**  
गेरुवा, बर्दिया

रसिद नं. 10029

ठेली नम्बर .....  
जग्गा धनिको नम्बर .....  
बुझाएको मिति १४/११/१९

जग्गा धनिको नाम थर वतन : ... ..

मालपोत विवरण

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बुझाउनेको नाम थर वतन सही छाप

प्रमाणित गर्नेको सही छाप

बुझाउनेको सही छाप

प्रमाणित गर्नेको सही छाप

मिति : .....

यो रसिद २ प्रति हुनेछ कार्वन राखेर लेख्नु पर्छ ।

महिलो प्रति (सेतो) म.ले.प.को निमित्त कार्यालयमा सुरक्षित राख्नु पर्छ र दोस्रो प्रति (पहेलो) बुझाउनेलाई दिनु पर्छ ।

↑ Receipt of land revenue tax (*malpot*) paid to Geruwa Rural Municipality by an Indigenous peoples family in Geruwa village

“Though we have been deprived of the use of our land, we have been paying *malpot* as usual. We hope that one day we’ll regain access to our land,” said one of the participants in a FGD organized by Amnesty International and CSRC.<sup>82</sup> Many participants said they preferred to get adequate compensation (on a par with market prices) for their land if access to their land cannot be restored.

The Chairperson of Ward 4 of the Geruwa Rural Municipality stated that he felt uncomfortable collecting *malpot*. He said: “Though they are unable to cultivate the land fallen inside the national park, the Ward Office has been collecting the land tax because they [the displaced people] want to keep their legal status of landownership intact.”<sup>83</sup>

Section 20 of the Land Revenue Act provides for remission or full waiver of *malpot* in case the “land is eroded by the river or stream or becomes silted or affected by landslide or is covered with landslide and becomes incapable of yielding major crops”. This is subject to application by the affected farmers and an inquiry by the respective Land Revenue Office. The affected people have so far not applied for this, as they want to secure the tax receipt, because it is essential for their claim to return to their land.<sup>84</sup>

Interviewees also reported adverse effects on the Tharu and other disadvantaged communities, such as Dalits, compared to other communities affected by the changes in the river and BNP boundary. For the Tharu, it is difficult to just leave and forget the place chosen and occupied by their forebears. A Tharu victim and activist for the restoration of IP’s lands, Mahadev Chaudhary, said:

**“Decades have passed living in this village with the hope that we would have our access to land back in future.”<sup>85</sup>**

<sup>82</sup> FGD with the affected farmers in Geruwa, 23 August 2019.

<sup>83</sup> Interview with Ambar Bahadur Chalaune, Chairperson, Ward 4, Geruwa, 23 August 2019.

<sup>84</sup> Section 20: Remission of Land Revenue in Cases of River Cutting or Landslide: (1) If any land subject to land revenue is eroded by the river or stream, or becomes silted or affected by landslide or is covered with landslide and becomes incapable of yielding major crops, the concerned landholder has to make an application setting out details thereof to the Land Revenue Office in such format and within such time-limit as may be prescribed. Provided that, in the case of the land having standing crops, the crops should not be harvested prior to holding inquiry pursuant to Subsection (2). (2) The Chief of Land Revenue Office has to hold inquiry into the matters set down in an application made pursuant to Sub-section (1) by visiting the spot in person or dispatching a mission within thirty days. If, in holding such inquiry, it appears to grant remission of the land revenue for that year, the Land Revenue Office has to ascertain by how much percentage of the land revenue has to be remitted, remit the same and give information thereof to the Land Revenue Department within seven days. (3) If it appears from the inquiry as referred to in Sub-section (2) that any land has become useless forever, the Land Revenue Office shall make a submission to the Government of Nepal to cross off the inventory of that land, and the Government of Nepal shall, if it deems reasonable, order the Land Revenue Office to cross off the inventory of that land.

<sup>85</sup> Interview with Mahadev Chaudhary, Ward 4, Geruwa Rural Municipality, Bardiya, 23 August 2019.

Jamman Singh K.C., Chairperson of Geruwa Rural Municipality, in an interview with Amnesty International, claimed that his office has been trying to address the problem of access to land for people whose land now lies within the boundaries of the BNP through discussions with provincial authorities and lawyers. Yet to date, the Municipality has not even managed to create a comprehensive record of those who lost access to their land, as a first step to taking concrete action.<sup>86</sup> When asked about what could be the solution of the boundary problem, the Mayor and the Chairperson of Ward 4, Ambar Bahadur Chalaune, both stated that first and foremost the area of the national park should be demarcated by the Department of National Park and Wildlife Conservation, a list of lands that have shifted inside the National Park made and the people who have lost land that they used must be provided redress, including by restoring their access to their land.<sup>87</sup>

## 4.2 IMPACT ON THE RIGHT TO LIVELIHOOD AND OTHER SOCIAL AND ECONOMIC RIGHTS

Nepal made a commitment when it ratified ILO Convention 169 in 2007 to protect Indigenous peoples' sources of livelihood and access to natural resources. However, the reality is very different. A 2019 NHRC report concluded that Nepal had so far failed to properly implement ILO Convention 169.<sup>88</sup>

Linking access to land with the right to adequate food, the Special Rapporteur on the right to food observed that "the obligation to respect, protect and fulfil the right to food requires that States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect), that they protect such access from encroachment by other private parties (the obligation to protect) and that they seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil)."

Activists working in areas where many forest-dependent Indigenous peoples live, complain that the government's conservation approach has become lopsided, "ignoring people in favour of animals".<sup>89</sup>

This is despite research (by Indigenous peoples and local communities) into co-managed and community-owned conservation areas showing they have on average more success in achieving conservation outcomes than protected areas that are exclusively state-run.<sup>90</sup>

The restrictions on hunting, grazing, tree cutting, land cultivation or forest use in place have severely impacted and dramatically altered Indigenous people's way of life. Apart from those living in buffer zones with access to buffer zone forests<sup>91</sup>, Indigenous peoples are barred from visiting national parks and are thus unable to access traditional resources for food<sup>92</sup>, shelter and herbal medicine.<sup>93</sup> This has left already deprived peoples to fend for themselves and pay costs they can ill afford. For example, they have to buy tin instead of having thatched roofs with produce from the forest and buy conventional instead of use traditional herbal medicines, potentially resulting in health and housing issues.

<sup>86</sup> Interview, 5 July 2020.

<sup>87</sup> Interview with Ambar Bahadur Chalaune, Chairperson, Ward 4, Geruwa, 23 August 2019, Interview with Jamman Singh K.C., Mayor, Geruwa Rural Municipality, 5 July 2020.

<sup>88</sup> NHRC, ILO Convention No 169. Implementation Status Report, March 2019, [nhrcnepal.org/nhrc\\_new/doc/newsletter/ILO\\_169\\_Implementation\\_Report\\_English\\_NHRC\\_Jestha\\_2076.pdf](http://nhrcnepal.org/nhrc_new/doc/newsletter/ILO_169_Implementation_Report_English_NHRC_Jestha_2076.pdf)

<sup>89</sup> Meeting with Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP): Advocates Shankar Limbu and Bhim Rai, 16 August 2018. See also, Jagannath Adhikari and Sharad Ghimire. A Bibliography on Environmental Justice in Nepal, Martin Chautari, 2002, Kathmandu, Nepal.

<sup>90</sup> Rights and Resources Initiative, Cornered by Protected Areas, June 2018, [www.rightsandresources.org/wp-content/uploads/2018/06/Cornered-by-PAs-Brief\\_RRI\\_June-2018.pdf](http://www.rightsandresources.org/wp-content/uploads/2018/06/Cornered-by-PAs-Brief_RRI_June-2018.pdf)

<sup>91</sup> Buffer zone forests have been created under Section 16b of the NPWCA. The law allows people in buffer zones to use forests in the designated areas, under the guidance of users' committees. Chitwan National Park And Its Buffer Zone Management Plan, 2013-2017, [chitwannationalpark.gov.np/index.php/document-repository/publications-chitwan-national-park/28-management-plan-printed/file](http://chitwannationalpark.gov.np/index.php/document-repository/publications-chitwan-national-park/28-management-plan-printed/file)

<sup>92</sup> Lam LM, Paul S., *Disputed Land Rights and Conservation-led Displacement: A Double Whammy on the Poor*, *Conservation and Society*, 2014, Vol 12, pp. 65-76, [www.conservationandsociety.org/text.asp?2014/12/1/65/132132](http://www.conservationandsociety.org/text.asp?2014/12/1/65/132132)

<sup>93</sup> Though Tharus had built up traditional knowledge of medicinal plants combined with strong beliefs in the supernatural powers of plants for the prevention or treatment of various illnesses, it has reportedly become challenging to sustain this knowledge. See, Kalpana Ghimire and Rishi Bastakoti, *Traditional Knowledge Of Tharu Of Nepal On Medicinal Plants And Healthcare Systems*, December 2007, [www.researchgate.net/publication/269580487\\_Traditional\\_knowledge\\_of\\_Tharu\\_of\\_Nepal\\_on\\_medicinal\\_plants\\_and\\_healthcare\\_systems](http://www.researchgate.net/publication/269580487_Traditional_knowledge_of_Tharu_of_Nepal_on_medicinal_plants_and_healthcare_systems)

### **VIOLATIONS IN THE NAME OF CONSERVATION**

"WHAT CRIME HAD I COMMITTED BY PUTTING MY FEET ON THE LAND THAT I OWN"

Under international human rights law, the restrictions on access to the forests and natural resources on which Indigenous peoples have traditionally relied could be unjustified and amount to a denial of access to food.<sup>94</sup>

The impact on the livelihoods of Indigenous peoples is demonstrated by the hardship of the Sonaha peoples.<sup>95</sup> The Sonaha are a minority fishing community numbering around 1,200 spread across Bardiya, Kailali and Kanchanpur districts, who have traditionally led a semi-nomadic life, fishing, foraging and panning gold in the Karnali River.<sup>96</sup>

After the creation of BNP, the Sonaha were barred from fishing in the Geruwa river that had sustained them for generations. Armed guards harassed and beat them for gathering resources for survival. Several landless Sonaha families were forced to become bonded labourers; many others migrated to India.<sup>97</sup>

In 2008, after relentless pressure from the Sonaha community and civil society activists, the BNP administration issued fishing permits for the Sonaha in the buffer zone (Sonaha outside the buffer zone were not included). The permit came with numerous restrictions: the Sonaha could only fish during the specified period of the year; they had to carry the permit while fishing; they could not fish at night (which according to the Sonaha is the ideal time for fishing); only certain types of fishing equipment were allowed; only one member of the household was given a permit and only that particular individual was allowed to fish. Still, obtaining fishing permits was an important achievement for the Sonaha.

But a few months later, two Sonaha men from Manau VDC, Bardiya district were arrested on suspicion of involvement in rhino poaching. After this, the park cancelled the fishing permits of the entire Sonaha community in the buffer zone. This collective punishment was a big blow to the Sonaha, who had only just obtained permits after a long struggle.<sup>98</sup> The Sonaha continue to struggle for their fishing rights. The fifth amendment to the NPWC Act, passed in 2017, inserted a provision allowing local people in buffer zones to pursue their traditional livelihoods, including fishing.<sup>99</sup> At the time of writing, the Sonaha had still not been provided with permits.

Due to lack of alternative livelihoods, financial hardship and inability to meet household costs, many Indigenous peoples evicted from their land have been compelled to become sharecroppers (*bataiya*), i.e., they cultivate other people's land in return for 50 percent of the harvest.<sup>100</sup>

*Bataiya* is a traditional form of sharecropping practiced in the western Terai.<sup>101</sup> It has been a major basis of livelihood for landless people. According to a tentative estimate by CSRC, around 14.5 million farmers in Nepal rely on the *bataiya* system for their livelihood.<sup>102</sup>

The *bataiya* system has huge implications from a human rights perspective, especially in terms of right against exploitation guaranteed under Nepal's Constitution.<sup>103</sup> However, *bataiya* is governed by social rather than legal norms. There is no specific formal legal instrument adopted by the State to guide this practice.

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<sup>94</sup> States have discretion to strike a balance between environmental protection and other societal goals, such as economic development and the promotion of other human rights. But the balance struck cannot be unreasonable or result in unjustified, foreseeable infringements of human rights.

In examining whether the balance is reasonable, a number of factors may be considered, including whether the level of environmental protection resulted from a decision-making process that satisfies the procedural obligations; whether it accords with national and international standards; whether it is not retrogressive; and whether it is non-discriminatory. Finally, States must implement and comply with the standards that they have adopted. See, Forest Peoples Programme, *Indigenous Peoples and United Nations Human Rights Bodies. A Compilation of UN Treaty Body Jurisprudence, Special Procedures of the Human Rights Council, and the Advice of the Expert Mechanism on the Rights of Indigenous Peoples*. Volume VII, 2015-2016, para. 67, [www.forestpeoples.org/sites/default/files/publication/2017/03/cos-2015-16.pdf](http://www.forestpeoples.org/sites/default/files/publication/2017/03/cos-2015-16.pdf)

<sup>95</sup> Although they have a distinct language, culture and traditional homeland, the Sonaha have so far not been included in the list of 59 legally recognized Indigenous Nationalities of Nepal.

<sup>96</sup> Oral testimonies suggest that they have been living in the lower Karnali delta since before Nepal's unification. See Sudeep Jana Thing and others, *The Politics of Conservation: Sonaha, Riverscape in the Bardia National Park and Buffer Zone, Nepal*, Conservation and Society, 2017, Vol 15, Issue 3, pp. 292-303, [www.conservationandsociety.org/article.asp?issn=0972-4923;year=2017;volume=15;issue=3;page=292;epage=303;aulast=Thing](http://www.conservationandsociety.org/article.asp?issn=0972-4923;year=2017;volume=15;issue=3;page=292;epage=303;aulast=Thing)

<sup>97</sup> Sudeep Jana Thing and others, see above.

<sup>98</sup> Shradha Ghale, 27 March 2018.

<sup>99</sup> Section 5.2 of the Act states that the local residents near the park shall be allowed "to use their customary trails, pastures, drinking water sources and irrigation facilities and embankments" and that "those traditionally engaged in harvesting wild vegetables and tubers and fishing will be allowed to pursue such activities as long as they do not harm the environment, forest, or wildlife in the national park or reserve."

<sup>100</sup> FGDs in Geruwa, 23 August 2019, and Krantipur, Banke, 27 August 2019.

<sup>101</sup> CSRC, *Locally Present Land Tenure Typology in Nepal: A Study Report*, May 2018, Glossary.

<sup>102</sup> CSRC, *Land Tenure and Agrarian Reforms in Nepal*, 2011, p. 25, [www.csrcnepal.org/wp-content/uploads/2019/07/2dpV2BZ0lsM4luC-cB\\_L2A00gEbYm-U.pdf](http://www.csrcnepal.org/wp-content/uploads/2019/07/2dpV2BZ0lsM4luC-cB_L2A00gEbYm-U.pdf)

This estimate was based in a study involving 25,199 households and 143,125 people in 16 districts. *Bataiya* is also known as *adhya*.

<sup>103</sup> Article 29. Right against exploitation: (1) Every person shall have the right against exploitation. (2) No person shall be exploited in any manner on the grounds of religion, custom, tradition, usage, practice or on any other grounds.

## **VIOLATIONS IN THE NAME OF CONSERVATION**

**"WHAT CRIME HAD I COMMITTED BY PUTTING MY FEET ON THE LAND THAT I OWN"**



People interviewed in Banke and Bardiya districts reported that they frequently experienced exploitation by landlords, such as having to do household work or collect fodder and fuel wood without payment.

The extended family of Dasharath Tharu, Ward 4, Geruwa, lost 12 *bigha* (8.13 hectares)<sup>104</sup> of land in the national park and now all households in his family are dependent on *bataiya*. Showing his small wooden house, he said:

**“We have finally settled here after being displaced in 1983. We are not allowed to pick up a stone from my land, which has fallen inside the park. I am cultivating 1 *bigha* and 15 *kattha*<sup>105</sup> to sustain my family.”<sup>106</sup>**

## 4.3 DESTRUCTION OF CROPS BY WILD ANIMALS

The government, conservation NGOs and media in Nepal often hail wildlife population growth as a success story.<sup>107</sup> But for people living around national parks, growth in wildlife population has meant destruction of their crops and infrastructure, loss of livestock, and sometimes human injury and loss of life. Crop depredation by wildlife is one of the most pressing and widespread problems faced by people who live around national parks.<sup>108</sup>

In BNP the population of protected animals such as tiger, rhino and elephant has increased over the years.<sup>109</sup> Farmers in Bardiya complained about protected wild animals frequently destroying their crops, stored grains, farm animals and structures, including houses. Souni Tharu, living in Ward 4, Geruwa Municipality, told Amnesty International and CSRC:

**“Wild animals including elephant, boar, deer and monkey frequently come and destroy crops. If there is no crop, elephants come and destroy our house. They came and destroyed it thrice. I was given only 1,000 rupees compensation. Denial of access to land combined with frequent troubles by wild animals have made our life difficult.”<sup>110</sup>**

Sometimes animals even attack people. Five Tharu residents were reportedly killed by a tiger and a leopard at different locations in Bardiya district in October-November 2020.<sup>111</sup>

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<sup>104</sup> 1 *bigha* = 6,772.63 m<sup>2</sup> = 0.68 hectare.

<sup>105</sup> 20 *kattha* = 1 *bigha*.

<sup>106</sup> Interview, Geruwa, 23 August 2019.

<sup>107</sup> Himalayan Times, *Tiger population near double in Nepal*, 3 August 2020, [www.thehimalayantimes.com/nepal/tiger-population-near-double-in-nepal](http://www.thehimalayantimes.com/nepal/tiger-population-near-double-in-nepal)

<sup>108</sup> Jagannath Adhikari and Sharad Ghimire. 2002. *A Bibliography on Environmental Justice in Nepal*. Martin Chautari, Kathmandu, p. 79

<sup>109</sup> World Wildlife Fund, *Growth of tiger in Bardiya*, [www.tigers.panda.org/news\\_and\\_stories/stories/tiger\\_survey\\_in\\_bardiya\\_national\\_park/](http://www.tigers.panda.org/news_and_stories/stories/tiger_survey_in_bardiya_national_park/)

<sup>110</sup> Interview with Souni Tharu, 23 August 2019.

<sup>111</sup> Himalayan Times, *Tiger kills five in a month in Bardiya*, 20 November 2020, [www.thehimalayantimes.com/nepal/tiger-kills-five-in-a-month-in-bardiya](http://www.thehimalayantimes.com/nepal/tiger-kills-five-in-a-month-in-bardiya)

The impact of the destruction of crop by wildlife is especially severe on those who have little or no land and work as *bataiya*. Gurilal Tharu of Geruwa, Ward 4, lost 2 *bigha* and 10 *kattha* of land (roughly 1.7 hectares) now incorporated into the BNP. He said:

**“As we lost almost all our land to the national park, we work as *bataiya*, tilling other people’s land for survival. But one third of the crops we grow is destroyed by animals and half of the rest goes to the landlord. How could I survive with one third?”<sup>112</sup>**

He said a few years ago he received a small amount (NPR 1,000, US\$8.5) as compensation for loss of crops from the national park authorities. He had not approached the park authority since because the process to obtain compensation is lengthy and the amount of compensation is nominal. Furthermore, without land titles, farmers are not able to claim compensation for the damage.<sup>113</sup>

Section 3D of the NPWC Act confines the government’s obligation to providing “relief” and ignores the duty to provide adequate compensation.<sup>114</sup> According to the relief guidelines, those who have suffered crop losses caused by wildlife can get relief up to Rs 20,000. However, in BNP, any relief provided for such losses has been symbolic rather than rights-based. The warden of the BNP said that over 12 months, his office had received 500 applications but awarded relief to only 45 people, as most of them failed to produce enough documents (including the landownership certificate, and a recommendation letter from the Buffer Zone Committee). Those without land titles, which include many Indigenous peoples and Dalits, are not even eligible for relief.

Discussions with Indigenous peoples groups brought out that even where relief is provided, it is not disbursed promptly. The process for filing for relief is lengthy and complicated. Applicants have to fill out a form, provide documents such as their land title, photographs with details of the damages, and take the documents to the buffer zone management committee office. The committee goes over the application and sends it for verification to the ward office, which in turn sends it to the national park office. Villagers complained to Amnesty International and CSRC about the nominal amount of relief, the cumbersome procedure, the delay in verification and payment of relief (it is distributed once a year) and the lack of relief for recurring destruction by certain types of animals (e.g., monkeys).<sup>115</sup>

## **4.4 ARBITRARY ARREST AND DETENTION, TORTURE AND OTHER ILL-TREATMENT, AND EXCESSIVE USE OF FORCE**

Indigenous peoples are frequently arrested and detained for entering the national parks and reserves. Many of them have faced ill-treatment, even torture, at the hands of army personnel deployed in the parks. Some have died as a result.

In July 2020, Arun Shrestha, chief of Batuk Dal Battalion, the Nepal Army unit stationed in Chitwan National Park, said they arrest around 400 people from the park in a month.<sup>116</sup>

Several studies and reports suggest that Indigenous peoples are overrepresented in the population incarcerated for wildlife crimes in Nepal.<sup>117</sup> Critics say authorities often arrest poor, low-level actors rather

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<sup>112</sup> Interview with Ram Awatar Tharu, Ward 4, Geruwa Rural Municipality, 23 August 2019.

<sup>113</sup> Shradha Ghale, *The tiger and the farmer*, Kathmandu Post, 10 April 2018, [www.kathmandupost.ekantipur.com/news/2018-04-10/the-tiger-and-the-farmer.html](http://www.kathmandupost.ekantipur.com/news/2018-04-10/the-tiger-and-the-farmer.html)

<sup>114</sup> The Section 3D reads: Relief shall be provided as prescribed against the destruction of life and property occurred outside national park and reserve area due to the conserved wildlife’s attack.

<sup>115</sup> FGD with affected farmers, Ward 4, Geruwa Rural Municipality, 23 August 2019.

<sup>116</sup> Kathmandu Post, *Nepal Army personnel blamed for death of Chepang youth*, 25 July 2020, [tkpo.st/3f0axFU](https://tkpo.st/3f0axFU)

<sup>117</sup> Ukesh Raj Bhujju et al. 2009. *Report on the Facts and Issues on Poaching of Mega Species and Illegal Trade in Their Parts in Nepal*, Transparency International Nepal. Also see: Roshan Sedhai, *Three generations of rhino poaching, Prajas still dirt poor*, 20 March 2017, [www.myrepublica.nagariknetwork.com/news/16769/](http://www.myrepublica.nagariknetwork.com/news/16769/)

than powerful entities involved in wildlife crime.<sup>118</sup> A recent study found that majority of people serving prison sentences for alleged involvement in wildlife trade in Nepal belong to marginalized Indigenous communities, mainly Chepang, Tharu and Tamang. Most of them come from households below the poverty line. The punishment had negatively impacted their livelihoods and children's education, forced their family members to sell property or migrate for work, led to divorce or estrangement from their wife, and caused deep social stigma.<sup>119</sup>

The Bufferzone Area Peoples' Rights' Federation (*Prabhat Kiran Sewa Samaj*), a Bharatpur-based NGO, has records showing 151 people were held in Chitwan district prison for alleged wildlife-related crimes as of January-February 2015. During 2014, the DNPWC detained 142 people for wildlife offences. Of these, 73 alleged they had been falsely accused. Among the 142, 64 were Chepang and others belonged to other Indigenous groups such as the Kumal, Bote and Tharu communities.<sup>120</sup> The organisation also has recorded 196 complaints from 44 women and 152 men regarding confiscation of fishing nets, destructions of boats, beatings and arbitrary detention between April 2018 and April 2020.<sup>121</sup>

People in the Tharu community in Geruwa, Bardiya district also complained about the discriminatory treatment and harassment by Nepal Army officials. Dipendra Tharu, a former *badghar* (chieftain) complained that he was arrested by the Army and taken to the barracks simply because he crossed the boundary visiting land under his ownership by law, but now situated in the BNP. "What crime had I committed by putting my feet on the land that I own?", he told Amnesty International and CSRC.

Women who live near the parks are particularly vulnerable to human rights violations as they enter the forest daily to collect fuelwood and fodder. On 12 May 2012, a Nepal Army soldier beat up and sexually assaulted a landless woman in Beslar community forest in the buffer zone of CNP.<sup>122</sup> There have been incidents in which army personnel were engaging in consensual relationships with local women but then disappeared at the end of their two-year posting, leaving the women to face social stigma and raise children born outside of marriage.<sup>123</sup>

In 2010, the Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) produced a summary of concerns about excessive and sometimes unwarranted lethal force by the security forces. It documented six cases in which it found credible allegations of the unlawful use of lethal force by the Nepal Army patrolling in BNP, CNP, and the Parsa Wildlife Reserve. OHCHR states:

**“Army and National Park officials have justified the killings by claiming that the victims were poachers killed by Army personnel in self-defence. There is evidence in all of these cases casting doubt on these claims, and warranting an independent investigation. In these cases, the Army has not cooperated with police investigations, including by failing to make personnel available to the police for questioning. In a Bardiya National Park case (...), in which three women including a 12-year-old child were killed, Army and National Park officials played an active role in obstructing criminal**

<sup>118</sup> Kathmandu Post, *Small fish and scapegoats*, 3 April 2017, [www.kathmandupost.com/opinion/2017/04/03/small-fish-and-scapegoats](http://www.kathmandupost.com/opinion/2017/04/03/small-fish-and-scapegoats)

<sup>119</sup> Kumar Paudel, Gary R. Potter and Jacob Phelps. February 2020 (available online: 15 December 2019). *Conservation enforcement: Insights from people incarcerated for wildlife crimes in Nepal*. Conservation Science and Practice, Vol 2, Issue 2.

<sup>120</sup> Kathmandu Post, *Small fish and scapegoats*, 3 April 2017, [www.kathmandupost.com/opinion/2017/04/03/small-fish-and-scapegoats](http://www.kathmandupost.com/opinion/2017/04/03/small-fish-and-scapegoats)

<sup>121</sup> Document provided to Amnesty International-Nepal, December 2020.

<sup>122</sup> Bipulendra Adhikari, *Inquiry into alleged rape by soldier*, Republica, 29 May 2012, [www.myrepublica.com/archive/61197/Inquiry-into-alleged-rape-by-soldier](http://www.myrepublica.com/archive/61197/Inquiry-into-alleged-rape-by-soldier)

<sup>123</sup> Kathmandu Post, *Men in green*, 22 May 2018, [www.kathmandupost.com/news/2018-05-22/men-in-green.html](http://www.kathmandupost.com/news/2018-05-22/men-in-green.html)

and Chhabilal Neupane and Chitra Bahadur Majhi, Samrakshit Kshetra ka Dwanda, Majhi Musahar Bote Kalyan Sewa Samiti, Nawalparasi and Prabhat Kiran Sewa Samaj, Chitwan, 2017.

**accountability by pressuring the families of the victims to withdraw criminal complaints. The Army continues to withhold its cooperation despite language in the revised Army Act that puts the investigation and prosecution of such cases clearly under the jurisdiction of the civilian authorities. These cases also highlight weaknesses in the National Parks and Wildlife Conservation Act, which appears to permit the use of firearms in situations where there is no immediate threat to life.”<sup>124</sup>**

Though reports of excessive use of lethal force by the Nepal Army have reduced over recent years, there are still regular reports of torture (sometimes resulting in death), rape and other crimes under international law, and human rights violations. As described below, the relatives of those killed are waiting for justice and an effective remedy.

The right to an effective remedy is included in many human rights treaties to which Nepal is a party, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of Racial Discrimination (CERD). It was consolidated into the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UN General Assembly in 2005.<sup>125</sup> There are five main components to this right: compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Many of the treaty bodies monitoring implementation of the treaties have set out in detail what remedies for specific violations would require from a state.

Many of the victims of torture, ill-treatment and relatives of victims of extrajudicial executions have serious difficulties in filing First Information Reports (FIRs), formal complaints seeking criminal investigations. As these have to be filed with the local police according to the Criminal Procedure Code, this poses a major challenge. Police repeatedly refuse to register the FIR or put pressure on the complainants to alter its content before accepting it.<sup>126</sup>

#### **4.4.1 CHITWAN – RAJ KUMAR CHEPANG: ILL-TREATMENT AND TORTURE RESULTING IN DEATH**

On 16 July 2020, 26-year-old Raj Kumar Chepang and six others (three Chepang men, two Chepang women and one person from the Indigenous Rai community) from Rapti Municipality, Ward 2, entered the CNP to collect *ghongi* (a species of snail eaten as a delicacy) in the river. An army soldier arrested and tortured them in the park. They were released on the same day. According to Raj Kumar Chepang’s family members, he remained ill on returning home after the beating. He was admitted to hospital and died on 22 July 2020.

<sup>124</sup> OHCHR-Nepal, Investigating Allegations of Extra-Judicial Killings in the Terai. Summary of Concerns, July 2010, p. 9, [www.nepal.ohchr.org/en/resources/Documents/English/reports/HCR/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf](http://www.nepal.ohchr.org/en/resources/Documents/English/reports/HCR/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf)

<sup>125</sup> OHCHR. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005. <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>

<sup>126</sup> Human Rights Watch and Advocacy Forum, No law, no justice, no state for victims, November 2020, p. 18, [https://www.hrw.org/sites/default/files/media\\_2020/11/nepal1120\\_web\\_1.pdf](https://www.hrw.org/sites/default/files/media_2020/11/nepal1120_web_1.pdf)

Santosh Chepang, one of the torture survivors, said:

**“We were collecting snails in a rivulet in the park when a Nepal Army personnel found us. First, he asked us a few questions. We said sorry for entering. He told one of us to ‘go there’, asked him to lay down in the water and he started kicking him with his knee-high boots. Then, the army personnel asked me to go there. He did the same thing to me. He beat me up very badly. For 20-25 minutes, he beat all of us except the two women. When the women asked the soldier not to beat us, he verbally abused them. Then, we were asked to carry wooden logs until we reached the park administration. We were beaten up again on the way. When we tried to speak, the soldier did not let us speak. The park administration took our photos and registered our names. In the beginning, the officials asked us to pay NPR 1,000 per person, but we pleaded with them as we did not have much money. We agreed to pay NPR 500 per person. While returning home, Raj Kumar was not able to walk properly. We supported him. His condition grew worse, and that led to his death.”<sup>127</sup>**

Santa Lal Praja, who had gone to the river with Raj Kumar, also said he and his friends, except for the two women, were beaten by the soldiers. He said they were also forced to carry heavy wooden logs and do 100 push-ups.<sup>128</sup>

After Raj Kumar died, his family submitted a FIR at the Chitwan District Police Office on 23 July 2020. The police only registered it on 24 July 2020 after sustained pressure from the family and local activists.<sup>129</sup> In the FIR, Raj Kumar’s father claimed that his son was tortured by the army leading to his death.

A post-mortem of Raj Kumar Chepang’s body was carried out at the Tribhuvan University Teaching Hospital in Maharajgunj, Kathmandu on 27 July 2020. After the post-mortem, the family received the body on 2 August and cremated it following the community’s rituals.<sup>130</sup> The post-mortem report was provided to the police and the family.<sup>131</sup> It concludes that the cause of death is undetermined pending the results of further blood and tissue examinations at the National Forensic Laboratory and the National Public Health Laboratory

<sup>127</sup> Advocacy Forum and Terai Human Rights Defenders Alliance, A memorandum to the Chairperson of the Law, Justice and Human Rights Committee seeking investigation into incidents of custodial deaths, 22 September 2020.

<sup>128</sup> Kathmandu Post, *Nepal Army Personnel Blamed for Death of Chepang Youth*, 24 July 2020, [tkpo.st/3f0axFU](https://tkpo.st/3f0axFU)

<sup>129</sup> The Record, *Bailed out by blood money*, 5 August 2020, [www.recordnepal.com/wire/features/bailed-out-by-blood-money/](https://www.recordnepal.com/wire/features/bailed-out-by-blood-money/)

<sup>130</sup> The Record, *Bailed out by blood money*, 5 August 2020, [www.recordnepal.com/wire/features/bailed-out-by-blood-money/](https://www.recordnepal.com/wire/features/bailed-out-by-blood-money/)

<sup>131</sup> Advocacy Forum and Terai Human Rights Defenders Alliance, A memorandum to the Chairperson of the Law, Justice and Human Rights Committee seeking investigation into incidents of custodial deaths, 22 September 2020.

respectively. It, however, notes three external injuries on the back, including “a scabbed off abrasion with reddish base” on the left upper back, and “two linear brownish abrasions” on the lower back.<sup>132</sup> The internal examination of the back found two contusions measuring 4x2cm and one measuring 4x4cm, corresponding to the external injuries.<sup>133</sup>

The NHRC also investigated the death of Raj Kumar Chepang but, at the time of writing, its findings had not been made public.<sup>134</sup>

The Nepal Army has said that it has initiated an investigation. In a press release dated 24 July 2020, the army said it “commits to extend its full cooperation to the Government agencies entrusted with the investigation process.”<sup>135</sup>

The authorities first offered the family some out-of-court monetary relief in return for dropping the legal action. In a meeting on 31 July 2020 at the District Administration Office, the CNP authorities committed to provide Nepali rupees (NRs) 700,000 (USD 5,937) and the Rapti Municipal Office agreed to provide NRs 300,000 (USD 2,545) to the family of Raj Kumar Chepang.<sup>136</sup> Though there was some delay, as of April 2021 the Rapti Municipality and the National Park Office had paid out the amount they had committed to provide. The other six people, including Santosh Chepang, who were beaten together with Raj Kumar in Army custody have so far not received any money or any other form of reparation.<sup>137</sup>

It was only after considerable public pressure that the authorities conducted a criminal investigation. Subsequently, on 20 September 2020, a Nepal Army soldier was arrested on suspicion of murder.<sup>138</sup> On 13 October 2020, the Chitwan District Court ordered for him to be remanded pending the outcome of his trial.<sup>139</sup> The court convicted the soldier to nine months’ imprisonment and a fine of NRs 9,000 (USD 75) on 12 July 2021. It also ordered him to pay NRs 200,000 (USD 1,675) compensation to the family of the victim.<sup>140</sup> He was immediately released and the fine was reduced to NRs 2,100 (USD 18) on the basis that he had already served more than 9 months. A study of the judgment shows that the soldier was charged under Section 182 (3) of the Penal Code (death by negligence) and that all but one of the people who had gone with him to collect snails when giving evidence in court said they were not beaten, but only “scolded” by the soldier. One witness maintained that Raj Kumar Chepang was “manhandled” in the river, made to do sit-ups in the water, and beaten using hands. At the time of writing, no appeal had been lodged against the decision. During a telephone conversation with Amnesty International-Nepal on 29 July 2021, the Chitwan District Attorney stated he is likely to appeal. An appeal needs to be filed within 70 days of the judgment. Amnesty International-Nepal and CSRC continue to closely monitor the case.

## 4.4.2 CHITWAN – SHIKHARAM CHAUDHARY: ILL-TREATMENT AND TORTURE RESULTING IN DEATH

In June 2006 Shikharam Chaudhary was arrested by CNP forest rangers on suspicion of hiding a rhinoceros horn, allegedly poached by his son from the national park. The rangers came to Shikharam’s home, could not find the horn but detained Shikharam anyway, as court documents filed by the prosecution show.<sup>141</sup>

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<sup>132</sup> Autopsy report of 12 July 2020, p. 2.

<sup>133</sup> Autopsy report, p. 4.

<sup>134</sup> Kathmandu Post, *National Human Rights Commission takes serious exception to the forceful eviction and killing of a youth by Chitwan National Park Authority*, 27 July 2020, [www.kathmandupost.com/province-no-3/2020/07/24/national-human-rights-commission-takes-serious-exception-to-the-forceful- eviction-and-killing-of-a-youth-by-chitwan-national-park-authority](http://www.kathmandupost.com/province-no-3/2020/07/24/national-human-rights-commission-takes-serious-exception-to-the-forceful- eviction-and-killing-of-a-youth-by-chitwan-national-park-authority)

<sup>135</sup> Amnesty International-Nepal conversation with Santosh Ballave Poudel, 16 October 2020.

<sup>136</sup> Kathmandu Post, *Agreement to provide Rs 1 million as a relief to Raj Kumar’s family*, 2 August 2020, available at [tkpo.st/30hHg5x](http://tkpo.st/30hHg5x)

<sup>137</sup> Conversation with Santosh Chepang, Rapti Municipality, Chitwan, 14 October 2020.

<sup>138</sup> Kathmandu Post, *Nepal Army soldier held on charge of assaulting Chepang youth in Chitwan National Park in July*, 30 September 2020, [tkpo.st/3mZ5JG9](http://tkpo.st/3mZ5JG9) and conversation with Om Prakash Sen Thakuri, Executive Director, Advocacy Forum, 13 October 2020.

<sup>139</sup> Onlinekhabar, *Soldier accused of Raj Kumar Chepang death arrested*, 14 October 2020, [www.onlinekhabar.com/2020/10/903128](http://www.onlinekhabar.com/2020/10/903128)

<sup>140</sup> Kathmandu Post, *Army man convicted death of man inside Chitwan Park*, 14 July 2021, [www.kathmandupost.com/province-no-3/2021/07/14/army-officer-convicted-in-death-of-man-inside-chitwan-park](http://www.kathmandupost.com/province-no-3/2021/07/14/army-officer-convicted-in-death-of-man-inside-chitwan-park)

<sup>141</sup> Buzzfeednews, *WWF Funds Guards Who Have Tortured And Killed People*, 4 March 2019, [www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death](http://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death) Also see, Fact Finding Mission Report, February 2020, *Violation of Indigenous Peoples’ Human Rights in Chitwan National Park of Nepal Submitted to: Independent panel of experts- WWF Independent review*, Submitted by Lawyers’ Association for Human Rights of Nepalese IPs (LAHURNIP) National Indigenous Women Federation (NIWF), [www.iwgia.org/images/publications/new-publications/2020/Violation\\_of\\_Indigenous\\_Peoples\\_Human\\_Rights\\_in\\_Chitwan\\_National\\_Park\\_of\\_Nepal.pdf](http://www.iwgia.org/images/publications/new-publications/2020/Violation_of_Indigenous_Peoples_Human_Rights_in_Chitwan_National_Park_of_Nepal.pdf)

He died during his detention. An autopsy showed seven broken ribs and “blue marks and bruises” all over his body. The cause of death was declared to be “excessive pressure applied on the back and left side of the chest,” which rendered Shikharam unable to breathe.<sup>142</sup> Seven eyewitnesses corroborated non-stop beatings. Three park officials, including the warden, were initially arrested and charged with murder.<sup>143</sup> On 6 March 2007, nine months after the arrests, the charges against the park officials were withdrawn in court, after a central government cabinet decision that the case against them should not proceed.<sup>144</sup> The government did not give any explanation for stopping the investigation into the death of Shikharam Chaudhary.

In this case, villagers demanded a compensation of NRs 1 million (USD 8,500). Family members confirmed that they received NRs 600,000 (USD 5,090).<sup>145</sup> As the investigation could not proceed, the cause of Shikharam Chaudhary’s death remains unconfirmed.<sup>146</sup>

### 4.4.3 BARDIYA: ARBITRARY ARRESTS AND DETENTION

Villagers in the buffer zone around BNP told journalists in 2018 that armed guards often resort to beating, verbal abuse, confiscation of sickles (*hasiya*) and fishing equipment, arbitrary arrests and fines. Villagers found to be collecting thatch grass or fishing without permits are sometimes forced to do chores for the army—cutting grass at the army post, cleaning up, painting the walls at the barracks, and so on.<sup>147</sup>

Amnesty International and CSRC has documented in detail the arrests and detention of 20 people in May 2017 in the context of the dispute between the BZMC and Tharu villagers in Jharniya, Magaradi VDC (see above). On 10 May 2017, army personnel stationed in the BNP arrested seven Tharu women and 13 men from the Jharniya and Sitronela settlement, Ward 6, Magaradi VDC in the buffer zone of the park. They were detained for 25 days and threatened until they agreed to ensure the whole community of 105 Tharu households left the area. They were finally released on bail of NRs 28,250 (USD 235) each on 15 June 2017 but had to report to the national park office every two months for two years.<sup>148</sup>

Among those arrested were community activists Keshuram Tharu, Hariram Tharu, and Sundar Lal Tharu, and the chair of the Village Land Rights Forum, Asha Rani Tharu, who was charged with cutting forest trees and illegally living in the buffer zone. Asha Rani Tharu was released after seven days at the National Park office; the others were held for 25 days. They had to take a loan to pay the bail money. The money lender charged 36 percent interest on the loan. Several years later, they continue to struggling to pay it back.<sup>149</sup>

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<sup>142</sup> Buzzfeednews, *WWF funds guards who have tortured and killed people*, 4 March 2019 (see above).

<sup>143</sup> Himalayan Times, *Wildlife wardens suspended*, 14 June 2006, [www.thehimalayantimes.com/nepal/wildlife-wardens-suspended/](http://www.thehimalayantimes.com/nepal/wildlife-wardens-suspended/)

<sup>144</sup> Kathmandu Post, *Nepali park officials tortured a man to death. Then, the government and the World Wide Fund for Nature rewarded them*, 3 March 2019, <https://kathmandupost.com/investigations/2019/03/03/nepals-park-officials-who-beat-and-tortured-a-man-were-rewarded-by-the-government-and-the-world-wide-fund-for-nature>

<sup>145</sup> Amnesty International-Nepal, conversation with two family members, December 2018.

<sup>146</sup> Report of independent panel set up by WWF (see above), p. 115. The panel found that “WWF showed poor judgment by issuing a public statement in the form that it did. The statement “welcomes” the release of the suspects, without any expression of concern for the deceased and his family or for justice and accountability for the conduct that resulted in the death of Shikharam Chaudhary.” (p. 118). See also, Himalayan Times, *Wildlife wardens suspended*, 14 June 2006, see above.

<sup>147</sup> Kathmandu post, *Men in green*, 22 May 2018, [www.kathmandupost.ekantipur.com/news/2018-05-22/men-in-green.html](http://www.kathmandupost.ekantipur.com/news/2018-05-22/men-in-green.html)

<sup>148</sup> Interviews with Asha Rani Tharu, Keshuram Tharu and Hariram Tharu, November 2020.

<sup>149</sup> Interviews with Asha Rani Tharu, Keshuram Tharu and Hariram Tharu, November 2020.

# 5. LAW AND POLICY

As the cases above indicate, Nepal's conservation laws and policies have directly contributed to the marginalization of Indigenous peoples and the violation of their human rights. The provisions in law that have contributed to that are summarised below.

## 5.1 NATIONAL PARK AND WILDLIFE CONSERVATION ACT, 1973

The National Park and Wildlife Conservation Act, 1973 (NPWCA),<sup>150</sup> is the overarching law governing protected areas. The Act has long been criticized for focusing on wildlife protection without considering the needs of people who live in protected areas.<sup>151</sup> Local community members, activists and elected representatives in protected areas have been demanding that the act be substantially amended if not replaced entirely.<sup>152</sup> However, despite going through five amendments, the law remains fundamentally unchanged.

The Act's key provisions include:

- The government can declare an area a national park "by publishing a notice in the Nepal Gazette and indicating the boundary thereof."<sup>153</sup> There is no provision for free and prior informed consent of Indigenous communities as stipulated in the ILO Convention 169, the Convention on Biological Diversity (both of which Nepal has ratified), and UNDRIP.
- The rights of people previously living on newly-declared protected areas are not considered. The Act contains no provision for compensation for people whose land has been incorporated into a national park.<sup>154</sup>
- The law restricts hunting, grazing, tree cutting, land cultivation or forest use, and bans all building on a national park or reserve.<sup>155</sup>
- Where the above prohibitions are breached, Section 24 of the act provides 'authorised officers' with the powers to arrest without a warrant if there are reasonable grounds to believe that an offender is likely to escape. The arrested person must be produced before the adjudicating authority for legal action within 24 hours (excluding journey time).<sup>156</sup>

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<sup>150</sup> This replaced the Wildlife Conservation Act, 1959.

<sup>151</sup> Naya Sharma Paudel, Sudeep Jana & Jailab Kumar Rai. December 2011. *Contested law: Slow response to demands for reformulating protected area legal framework in Nepal*. ForestAction Nepal. Discussion Paper No. 11.5.

<sup>152</sup> Kathmandu Post, *Madi war chief on hunger strike against national park law*, 21 February 2020, [www.kathmandupost.com/province-no-3/2020/02/21/madi-ward-chief-on-hunger-strike-against-national-park-law](http://www.kathmandupost.com/province-no-3/2020/02/21/madi-ward-chief-on-hunger-strike-against-national-park-law), and Madi locals press for amendment to the act, [www.kathmandupost.com/national/2018/04/15/madi-locals-press-for-amendment-to-act](http://www.kathmandupost.com/national/2018/04/15/madi-locals-press-for-amendment-to-act)

<sup>153</sup> NPWC Act, Section 3.1.

<sup>154</sup> This is contrary to the provisions of the Land Acquisition Act, 1977, which does provide for compensation.

<sup>155</sup> NPWCA, Section 5.

<sup>156</sup> Law Commission, [lawcommission.gov.np/en/archives/13348](http://lawcommission.gov.np/en/archives/13348)

Until 2017, this adjudicating authority was the warden. Following changes in the law, the cases are now heard by the district courts.



- In cases where officers have ‘no alternative’ but to shoot the offender, even if he or she dies, they are immune from prosecution.<sup>157</sup>
- The fifth amendment to the Act has increased fines and jail terms for those convicted of wildlife crimes.<sup>158</sup> Punishment for wildlife offenses against selected animals<sup>159</sup> now includes a fine of NRs 500,000–1 million<sup>160</sup> (USD 4,242) or 5–15 years jail sentence or both. Punishment for wildlife offences involving other wild animals includes a fine of NRs 100,000–500,000 (USD 848 - 4,242) or 1–10 years jail sentence or both.
- The act does not facilitate effective consultations with Indigenous peoples, in order to obtain their free, prior and informed consent, in matters concerning the conservation of protected areas on their ancestral lands, as required under international law.<sup>161</sup>
- There is a provision for relief for those who have suffered losses due to wildlife, and those who have lost access to their land after it has fallen inside the national park boundary due to flooding and erosion, but the compensation process is lengthy and complicated. Compensation is contingent on the amount of funding allocated for the buffer zone by the national park, as well as on the priorities of the BZMC.<sup>162</sup> Those without land titles, which include many Indigenous peoples and Dalits, are not eligible for compensation.

## 5.2 FOREST ACT, 2019

The recently passed Forest Act, 2019,<sup>163</sup> empowers the government to designate areas as national forestland and to confer ownership of ‘national forestland’<sup>164</sup> outside national parks and wildlife reserves on the Nepal Government.<sup>165</sup>

Under this law:

- No forestland can be used for settlement or resettlement purposes;<sup>166</sup>
- Any cultivation, occupation or tilling of forestland or building of a house or hut or any other form of encroachment is an offence punishable with a maximum of five years’ imprisonment and/or a fine of NRs 100,000 (USD 823) or both;<sup>167</sup>
- There is no provision to protect Indigenous peoples’ rights to their ancestral lands or to protect landless people living on forestland from forced evictions – contrary to international human rights law;<sup>168</sup>
- Authorities are empowered to remove houses or huts constructed on forestland but there is no prescribed process for carrying out such evictions.

<sup>157</sup> Buzzfeednews, *WWF Funds Guards Who Have Tortured And Killed People*, 4 March 2019, [www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death](http://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death). In its report, the independent panel (see above), recommended that WWF should make clear that it would oppose any application of Article 24, “which would be inconsistent with applicable human rights standards.”

<sup>158</sup> See section 13 of the Fifth Amendment Act.

<sup>159</sup> These include rhinoceros, tiger, elephant, musk deer, clouded leopard, snow leopard or bison.

<sup>160</sup> Previously the fine amount was NRs 50,000–100,000. See section 26 of the NPWC Act.

<sup>161</sup> Articles 6 and 15 (1) of ILO Convention 169, 1989; Articles 29, 31, 32 of the UNDRIP, 2007.

<sup>162</sup> Section 3(C) reads: “If a house or land of any resident of the Buffer Zone falls inside the boundary of the national park due to flood or erosion, such affected individual is awarded reasonable compensation by the users group from within the fund set aside for the collective development of the local people”. Section 25 allows to spend 30 to 50 percent of the funds generated by the national park, reserve or protected area for community development.

<sup>163</sup> The Forest Act, 2019 replaced the Forest Act, 1993.

<sup>164</sup> The Forest Act, 2019, Section 2(p) defines a “national forest” as “a forest, forest conservation area, community forest, partnership forest, religious forest, lease-hold forest, national forest within [a] Province or inter-Provincial forest which is managed by the Government.”

<sup>165</sup> Section 3(1): Land ownership of the national forest shall be vested in the Government of Nepal.

<sup>166</sup> Section 12: No settlement or re-settlement may be made within forest area: (1) No forest area containing trees shall be used for the settlement or re-settlement. (2) In the case of the land in which settlement or resettlement was made subject to the then prevailing law on forest, prior to the commencement of this Act, the trees lying since the provision of such land shall be under ownership of the Government of Nepal, and such trees shall be removed as prescribed.

<sup>167</sup> Section 49. Offences: (c) To deforest the national forest or plough, dig, excavate, mine or cultivate in the land of forest area, build a road or other infrastructure, to make a house or shed, operate business or make encroachment therein, or cause such act to be done, Section 50. Punishment: (3): A person who commits, or causes to be committed, the offence under clause (c) of Section 49 shall be liable to the punishment of imprisonment for a term not exceeding five years or of a fine not exceeding one hundred thousand rupees or with both, and any house or shed built in or machinery, tools, vehicles used in such land shall also be forfeited, upon incorporating such land into the national forest.

<sup>168</sup> Forest Act, Section 50(3).

- No person is entitled to any right over forestland except through lease, permit or on any other basis granted by the Government of Nepal;<sup>169</sup>
- The removal, traffic or sale of forest products<sup>170</sup> and cutting down of trees or plants or their branches are prohibited.<sup>171</sup> There is no exception for the gathering of traditional medicines/plants.<sup>172</sup>

## 5.3 RIGHT TO HOUSING ACT, 2018

This act was passed to give effect to the fundamental right to housing provided for in the 2015 Constitution. It sets out eviction procedures under Section 5(4), specifically:

- Any eviction must be subject to prior consultation, notification and identification of the individual and family to be evicted;
- An authorized official or his/her representative must be present at the time of eviction. Evictions at night are prohibited;
- Special attention must be given if evicting senior citizens, people with sickness, people with disabilities, children, people unable to protect themselves, physically challenged and pregnant women;
- Procedural guarantees required under international human rights standards – including verification of personal data, access to a forum to appeal eviction decisions, alternative housing for those who cannot provide for themselves and compensation – are not referenced in the law;<sup>173</sup>
- Protection against forced eviction is ownership driven as the “right to be compensated” and to have been provided with a “resettlement facility” are available only for those evicted from housing built on “the land that they own”. Already marginalized Indigenous peoples, Dalits, the poor and other disadvantaged groups who may not have a legally recognised right to the land on which they live are thus further excluded;<sup>174</sup>
- Government regulations under this law are still to be issued. They are expected to set out in more detail the exact requirements, such as the length of notification, means of consultation and other details.

At the time of writing, there was still a need to bring the NPWCA and other laws in line with the 2015 Constitution and harmonize them with this Right to Housing Act and other more recent legislation.

## 5.4 BUFFER ZONE MANAGEMENT REGULATIONS, 1996 AND THE BUFFER ZONE MANAGEMENT GUIDELINES, 1999

The fourth amendment to the NPWCA passed in 1993 provided the Department of National Parks and Wildlife Conservation with the powers to establish buffer zones, defined as areas surrounding parks or reserves that allow the use of forest resources on a regular and beneficial basis by local people. The Buffer Zone Management Regulations subsequently issued in 1996 has the following relevant provisions:

- It provides the wardens of national parks managerial authority over all conservation and development programs in buffer zones;<sup>175</sup>
- Part 4 of the regulations gives the warden the power to form and register user committees to assist in community development and resource utilization.

<sup>169</sup> Forest Act, Section 8.

<sup>170</sup> As defined under Section 2(r) of the Act ‘forest products’ include all timber-based and non-timber products.

<sup>171</sup> Forest Act, Section 49.

<sup>172</sup> Forest Act, Section 49.

<sup>173</sup> Amnesty International, *Adequate Housing for All: Analysis of the Right to Housing Act*, 2018, p. 19, [www.amnesty.org/download/Documents/ASA3104962019ENGLISH.pdf](http://www.amnesty.org/download/Documents/ASA3104962019ENGLISH.pdf)

<sup>174</sup> Amnesty International, *Adequate Housing for All: Analysis of the Right to Housing Act*, 2018.

<sup>175</sup> See, for instance, the Bardiya National Park Management Plan, 2016-2020, [www.bardianationalpark.gov.np/index.php/en/component/docman/cat\\_view/5-downloads?orderby=dmdate\\_published&asc=DESC](http://www.bardianationalpark.gov.np/index.php/en/component/docman/cat_view/5-downloads?orderby=dmdate_published&asc=DESC)

- Part 5 lists prohibited activities, including cutting of trees and excavation of stones, sand and earth;
- Part 8 outlines compensation procedures. This does not include compensation for the loss of human life, livestock or crops due to damages by wildlife;
- The Guidelines create several types of committees beyond those already identified in the NPWCA and 1996 regulations. There is the Buffer Zone Development Council, under which user groups can be formed at the ward level, and user committees at the village level, consistent of representatives of user groups.

## 5.5 OTHER RELEVANT LAWS AND REGULATIONS

A number of other laws are also relevant to the issues highlighted in this report:

- The Land Acquisition Act 1977 authorizes the Government to acquire any land at any place for any public purpose, subject to compensation.<sup>176</sup>
- The Water Resources Act, 1992 declares the State is the owner of all available water resources.<sup>177</sup>
- The Aquatic Animal Protection Act, 1960 prohibits fishing in rivers without a license. This adversely affects the livelihood of Indigenous fishing communities such as the Tharu, Bote, Majhi, Musahar, Sonaha and Malaha, as licenses need to be renewed periodically and the process is cumbersome. Furthermore, it is issued in individual names, and cannot be shared with family members.<sup>178</sup>
- The Land Revenue Act 1978 consolidates the provisions relating to collection and recovery of land revenue and makes provisions on cultivation of land. It defines “land revenue” (*malpot*) as a revenue and any other revenue required “to be paid by a landowner” to the Nepal Government. It also makes cultivating on non-registered land punishable.<sup>179</sup>

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<sup>176</sup> The Land Acquisition Act 1977, Section 3.

<sup>177</sup> The Water Resources Act, 2049 (1992), Section 3.

<sup>178</sup> The Water Resources Act, Section 3, 4 and 5.

<sup>179</sup> Land Revenue Act 1978, Section 29.

# 6. VIOLATIONS OF THE RIGHT TO REMEDY

In respect of the human rights violations described above, none of the victims have been able to receive adequate compensation, or any other remedies guaranteed to them under the international law treaties to which Nepal is a party.

## 6.1 REMEDY FOR FORCED EVICTIONS

Under Nepal's international human rights obligations, people who have been forcibly evicted must be given an effective remedy, including adequate alternative housing and compensation. The UN Committee on Economic, Social and Cultural Rights (CESCR), the expert body which provides authoritative guidance on the implementation of the ICESCR, states that governments should respect the right to adequate housing. This includes refraining from forced evictions, protecting people from interference with their rights by third parties such as landlords, and adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to adequate housing. Governments must prioritize the realization of minimum essential levels of housing for everyone, whilst prioritizing the most disadvantaged groups in all programmes when allocating resources. The Committee also calls upon state parties to guarantee the right of people to participate in and be consulted over decisions that will affect them, and to provide an effective remedy if any of these rights are violated.<sup>180</sup>

However, in the cases investigated by Amnesty International and CSRC during the course of this research, the authorities have not only failed to refrain from forced evictions and adequately protect people from them but also failed to provide effective remedies for forced evictions.

Nepal's 2015 Constitution introduced a federal set-up in the country, placing all national parks and reserves under the jurisdiction of central government.<sup>181</sup>

Under Article 37 of the Constitution, the primary duty to ensure the right to housing and protection from eviction lies with the federal government. The roles of provincial and local governments are complementary. All three tiers have the "duty to respect", meaning they must refrain from causing any harm to people's right to housing. They must also uphold the "duty to protect" and "fulfil" as per the federal laws and the provincial and local laws made in compliance with federal laws. The federal government also has the responsibility to coordinate with provincial and local governments in taking measures towards the fulfilment of any legal obligations.

Despite this, during interviews with officials in Kathmandu, it became clear that there is limited political will in the federal government to provide effective remedy to Indigenous peoples affected by national parks – in part because confusion reigns regarding the designated powers and duties of individual provincial and local

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<sup>180</sup> CESCR, General Comment 4, para. 9 and General Comment 7, para. 13.

<sup>181</sup> Constitution of Nepal 2015, Schedule-5 (Relating to Clause 1 of Article 57, and Article 109), List of Federal Powers," No. 27).

authorities<sup>182</sup> and in part because regulations under key new laws, such as the Housing Act, are yet to be adopted.

On 27 July 2020, a group of human rights lawyers and activists filed a public interest litigation petition in the Supreme Court seeking a set of orders for protection from forced evictions of informal settlers, as well as the Chepang in Chitwan and the Tharu in Bardiya. The petition sought appropriate remedies for those already evicted (including victims of forced eviction carried out by CNP authorities on 18 July 2020 in Kusumkhola, Chitwan).<sup>183</sup> A key demand was for a court order to stall any evictions by any authority unless an alternative place to live has been provided. With regard to the forced eviction of the Chepang families of Kusumkhola, the petitioners demanded their proper resettlement in line with international human rights standards (see above definition), adequate compensation and criminal accountability against those involved in carrying out the forced eviction and thereby leaving them homeless and depriving them of their livelihoods. Invoking the Right to Food and Food Sovereignty Act, 2018<sup>184</sup> and the Penal Code Act, 2017<sup>185</sup>, the petitioners urged the Court to order the Ministry of Home Affairs to initiate criminal investigation and prosecutions against those responsible for the forced eviction of the Chepang families.

In line with article 36 of the Constitution, which guarantees the right to be free from hunger and to remain safe from a situation where life is threatened due to lack of food, Section 40(e) of the Right to Food and Food Sovereignty Act 2018 has criminalized the act of making anyone homeless and thereby depriving him/her of a source of basic livelihood punishable with maximum 5 years' imprisonment and NRs 500,000 (USD 4,242) fine under Section 42(c). Similarly, an act of "setting fire or using explosives in any house, office or property of any person" is subject to the imprisonment for a term of two to five years and a fine of NRs 20,000 to 50,000 (USD 170 to 425) under Section 285(3)(d) of the Penal Code Act, 2017.

After the initial hearing of the petition on 30 July 2020, the Supreme Court issued an interim order instructing all relevant authorities, including CNP office, to refrain from any forced eviction of Chepang families informally settled in Kusumkhola.<sup>186</sup> On 28 September 2020, the court ordered the NHRC to produce its report on the monitoring of the forced eviction of Chepang families within a week. The Court further ordered the Chitwan District Court's Registrar to reach the site and gather details about where the evicted families had settled, where the alternative housing was being constructed by Madi Municipality, and whether the construction site falls in the national park or buffer zone. As of April 2021, the NHRC and the CNP Registrar had submitted the information requested. The case was scheduled for final hearing on 16 May 2021, but was postponed due to a COVID-19 lockdown in the country.<sup>187</sup>

Beyond adhering to the 30 July order to refrain from any forced evictions of the Chepang families in Kusumkhola, the authorities have taken no measures to prevent forced evictions in the future.

## 6.2 REMEDY FOR LOSS OF LAND

The NPWCA states that buffer zone residents whose houses and lands fall inside the boundary of a national park as a result of flood or a landslide are eligible for compensation. However, people living in the buffer zone of BNP have yet to receive compensation for the loss of land despite 40 years or more since they lost access to their land. For many, return of their lands is paramount, but in the event that this is not possible, compensation for loss of land must reflect the value of the land they have lost. Sher Bahadur Khadka of Ward 6, Geruwa who has been struggling for restoration of access to his family's land, said:

**“We have approached the respective parliamentarians of the federal and provincial parliament several times. They have done nothing for this cause. We have no other alternative**

<sup>182</sup> See, for instance, Democracy Resource Center Nepal. *The Interrelationship between Three Levels of Government in Nepal's Federal Structure*. October 2020. DRCN, Lalitpur, Nepal. Also see: [www.kathmandupost.com/politics/2019/05/28/confusion-grips-three-tiers-of-government-over-division-of-royalties-from-natural-resources](http://www.kathmandupost.com/politics/2019/05/28/confusion-grips-three-tiers-of-government-over-division-of-royalties-from-natural-resources)

<sup>183</sup> Raju Prasad Chapagai and others vs Office of the Prime Minister and Council of Ministers, Writ Petition No 077-WO-0038.

<sup>184</sup> Section 40(e) and Section 42(c).

<sup>185</sup> Section 285(3)(d).

<sup>186</sup> Kathmandu Post, *Supreme Court orders all tiers of government to refrain from evicting squatters from their shelter*, 30 July 2020, [tkpo.st/30bamDu](http://tkpo.st/30bamDu)

<sup>187</sup> Conversation with Registrar, Chitwan District Court, 13 October 2020. Conversation with Shyam Babu Kafle, Head of Legal Section, NHRC, 14 October 2020.

**than to continue our struggle... In March 2020, the national park office [in an informal discussion] wanted us to agree on a nominal compensation (30–50 percent of the value of the land) but we did not agree. We want them to apply the rate that was applied for those affected by Chitwan National Park.”<sup>188</sup>**

In 2006, 67 farmers from Geruwa who had land certificates collectively approached the Supreme Court to get compensation for land they lost to the BNP (*Bhukhali Tharu v. Bardiya National Park Office et al.*).<sup>189</sup> The Supreme Court acknowledged the harms suffered by the farmers due to the shifting of their land but quashed their writ petition.

On 18 April 2006, the Court decided there was no need to order the authorities (National Park Office, BZMC and the National Park and Wildlife Conservation Department) to provide compensation as they had already said in their written replies that they were ready to compensate if all required documents (such as land ownership certificate and tax receipt) were submitted to substantiate those applicants' claims for compensation.<sup>190</sup>

Contrary to their written replies to the Court, however, the authorities (in particular, the BNP office) did not provide such compensation. When questioned, they told Amnesty International and CSRC that it is not possible to provide compensation as the income generated by the national park is insufficient for addressing this problem locally.

Sixty-one-year-old Souni Tharu, living in Ward 4, Geruwa told Amnesty International and CSRC:

**“We lodged a complaint in the District Administration Office, Bardiya. We also approached the National Park Office. We secured a recommendation from the Ward office about the situation of our land. We raised a fund for a court case. We entrusted a lawyer with the responsibility to file a court case. But the problem remains the same. All my three sons are sharecroppers.... My daughters got married in their childhood. I live with my younger son.”<sup>191</sup>**

The Warden of the BNP confirmed in November 2020 that there were no plans to provide compensation.<sup>192</sup> Park authorities are of the view that the problem lies with the legal provisions related to compensation<sup>193</sup> and

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<sup>188</sup> Interview with Sher Bahadur Khadka, Ward 6, Geruwa, 23 August 2019; 13 October 2020.

<sup>189</sup> Writ No 2877 of the Year 2062 (2005).

<sup>190</sup> Supreme Court decision, 18 April 2006.

<sup>191</sup> Interview with Souni Tharu, 23 August 2019.

<sup>192</sup> Conversation with Bishnu Prasad Shrestha, 9 November 2020.

<sup>193</sup> They refer to Section 3(C) of the NPWCA, which reads: "If a house or land of any resident of the Buffer Zone falls inside the boundary of the national park due to flood or erosion, such affected individual is awarded reasonable compensation by the users group from within the fund set aside for the collective development of the local people" and Section 25 which allows park authorities to spend 30 to 50 percent of the funds generated by the national park, reserve or protected area for community development.

argue there must be an amendment to the Act to require the Government of Nepal to allocate a budget to award compensation.<sup>194</sup>

The situation is slightly different in CNP, which has made some efforts to provide compensation for similar losses. A list of the shifted lands and the affected landholders was created in 2067 (2010) after a survey. Based on that list, the CNP reported that it gave compensation to the affected people on a priority basis.<sup>195</sup> For the fiscal year 2076/77 (2019/2020), it allocated NRs 5,000,000 (USD 42,420) in total out of the income generated through the National Park for this purpose. In the next fiscal year (2077/78, 2020/2021), NRs 10,000,000 (USD 84,840) has been allocated for compensation for loss of land.

After payment of compensation to the affected people, the landownership also transferred to the CNP. Up until June 2020, an additional 100 *bigha* (677,200m<sup>2</sup>) of land has been brought under the ownership of CNP.<sup>196</sup>

When asked why some national parks have adequate funds and others very little, the Warden of the BNP said that the major source of revenue is tourism which is not that developed in BNP compared to Chitwan.<sup>197</sup>

The lack of statutory protection for a right to reclaim the land that has fallen inside the park boundary, the absence of a clear duty of the government to provide adequate compensation to those whose land has shifted due to the floods or landslides, and absolute dependence of availability of compensatory remedy under the NPWCA on the income generated at local level have adversely affected thousands of people, especially those belonging to marginalized Indigenous communities.

Bishnu Prasad Shrestha, Under Secretary of the National Park and Wildlife Conservation Department, stated that a proper remedy cannot be provided unless the Act itself is amended to make the Government of Nepal responsible for compensating for such losses. He also said that while considering the Fifth Amendment to the NPWCA in 2017, the Department had proposed to amend the provision on compensation for loss of land, but the effort failed due to opposition from the finance ministry.<sup>198</sup>

Elected representatives of Geruwa Rural Municipality claimed that they have been raising concerns with the BNP of Geruwa Rural Municipality in 2017 passed a resolution calling for a survey to demarcate the park boundary to settle the problem.<sup>199</sup> However, apart from occasional meetings between the Municipality and the National Park Office, no concrete progress has been made.<sup>200</sup> Moreover, national park authorities are not accountable to local authorities, let alone to the affected Indigenous peoples; instead, they report to the Department of National Parks and Wildlife Conservation, the government agency in the Ministry of Forests and Environment at the central level. An official at the Bardiya district office suggested that the national park acts as a de facto parallel government in the district.<sup>201</sup>

On 25 July 2019, a delegation comprised of Amnesty International-Nepal, Justice and Rights Institute-Nepal (JuRI-Nepal), CSRC and National Land Rights Forum submitted a letter to Padma Kumari Aryal, the then Minister for Land Management, Cooperatives and Poverty Alleviation, urging her to act on the violation of the rights of forest-dependent Indigenous people and ensure they have unhindered access to the land which had fallen inside the boundary of BNP due to the change in the course of the Geruwa river. Key measures proposed were: a) constituting a high-level panel, conducting a thorough assessment of the problems faced by local people, b) ensuring the local people's access to their land, and c) providing adequate compensation for the losses suffered by local people due to lack of access to their land.<sup>202</sup> A separate memorandum was submitted to the NHRC calling for active monitoring of the violations and to make recommendations to the government. At the time the tenures of the then NHRC commissioners ended in October 2020, it was not known to have taken any specific initiative in response to the memorandum.<sup>203</sup>

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<sup>194</sup> Interviews with Annath Baral, Warden, 24 September 2019; Netra Raj Acharya, Chairperson, Buffer Zone Council, 3 July 2020; Bishnu Prasad Shrestha, Under Secretary, National Park and Wildlife Conservation Department, 29 June 2020.

<sup>195</sup> The CNP annual report 2018/2019 indicates that 19 households affected due to river-bank erosion received compensation after transferring ownership of the affected land to CNP. Out of 19, 13 households were indigenous peoples (six Tharu, six Kumal and one Tamang. Amnesty International and CSRC have not been able to verify this information.

<sup>196</sup> Interview with Warden, Narayan Rupakheti, 29 June 2020; Interview with Bishnu Prasad Dhakal, Conservation Officer, 29 June 2020. Also, see Chitwan National Park's Annual Report (2018/2019).

<sup>197</sup> Meeting with Anatha Baral, Warden of BNP, Thakurdwara, Bardiya 24 September 2019.

<sup>198</sup> Interview with Bishnu Prasad Shrestha, Under Secretary and Spokesperson, National Park and Wildlife Conservation Department, 29 June 2020.

<sup>199</sup> Interview with Jamman Singh K.C., Chairperson of Geruwa Rural Municipality, 13 October 2020.

<sup>200</sup> Interview with Jamman Singh K.C., see above.

<sup>201</sup> Interview with Arjun Subedi, assistant CDO, Bardiya, 24 September 2019.

<sup>202</sup> The letter was jointly submitted to the Ministry on behalf of Amnesty International Nepal, CSRC, Justice and Rights Institute Nepal (JuRI-Nepal) and National Land Rights Forum, 14 July 2019.

<sup>203</sup> On 25 July 2019, Amnesty International Nepal, CSRC, Justice and Rights Institute Nepal (JuRI-Nepal) and National Land Rights Forum made a submission to the NHRC, [old.amnestynepal.org/campaigns/ai-nepal-activities/](http://old.amnestynepal.org/campaigns/ai-nepal-activities/)

## 6.3 LAND ISSUES RESOLVING COMMISSION

In March 2020, the government established a new “Land Issues Resolving Commission” (LIRC) with a three-year tenure under a new Section 52B (6) of the Lands Act 1964, which was introduced in February 2020. This provision aims at identifying “landless dwellers” (defined as people without registered land ownership) and “unmanaged dwellers” (people who have some registered land, but are squatting on government land) and providing them with land ownership.<sup>204</sup>

As of early July 2021, the LIRC has signed memoranda of understanding with 743 local governments (out of 753 local authorities in the country).<sup>205</sup> They have also appointed local and district-level facilitation committees to monitor the work of the municipalities. These comprise nine members and have to include three women, of which one belongs to a Dalit community, but do not explicitly have to include representation for Indigenous peoples. These committees started their work in late 2020. Any appeals against the local committees’ decisions will be to the relevant district-level committees. In a meeting with Amnesty International and CSRC on 4 April 2021 the Chairperson and other members of the LIRC said they were aware of the displacement of forest-dependent Indigenous communities and families by the creation of National Parks, and committed to consult with the Government of Nepal to ensure alternative housing and land is provided, respecting Indigenous peoples’ rights to their traditional ways of life and their wish to not be relocated far from their traditional land.

The Commission asked local governments to prepare and provide lists of “landless dwellers” and “unmanaged dwellers” (for definitions, see above) to the Commission. Soon after its formation, the Commission in April 2020 had called upon all concerned authorities not to evict any “landless dwellers” or “unmanaged dwellers”.<sup>206</sup>

As this report was being finalized, the new government under Prime Minister Sher Bahadur Deuba terminated the mandate of the Commission.<sup>207</sup> As of the end of July 2021, the commission had received 1.18 million applications, including 247,960 from “landless dwellers” and 932,801 from “unmanaged dwellers”.<sup>208</sup> No reasons were given for the termination of the commission.

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<sup>204</sup> Under the law, “landless dweller” is defined to include “the individual and members of the family dependent on him/her who or his/her family never had any land since generations under their ownership and is unable to manage land through his/her or their family’s source of income, sources or efforts” and “unmanaged dwellers” are defined as “the individuals and the members of the family depending on him/her who have a registered private land in his/her or their family ownership within the State of Nepal and is living by building a house, tent in government unregistered, unused or forest land.”

<sup>205</sup> Ratopati, *Deuba government dismissing land commission*, 6 July 2021, <https://ratopati.com/story/190838/2021/7/21/bhumi-aayog->

<sup>206</sup> Press Statement of the Commission, 21 July 2020. See also its website: [www.lirc.gov.np/menu/about/74](http://www.lirc.gov.np/menu/about/74)

<sup>207</sup> Kantipur, *Land Commission dismissed*, 4 August 2021, <https://ekantipur.com/news/2021/08/04/162804340224291748.html>

<sup>208</sup> Kantipur, *Land Commission dismissed*, 4 August 2021, <https://ekantipur.com/news/2021/08/04/162804340224291748.html>



# 7. RECOMMENDATIONS

Amnesty International and CSRC are making the following recommendations:

1. To the federal government:
  - a) Amend the legal framework governing the country's conservation efforts, to guarantee the rights of Indigenous peoples to participate fully in the management of conservation initiatives on their lands, and ensure their right to free, prior and informed consent with regard to all initiatives affecting their human rights;
  - b) Organize a process enabling genuine consultations with Indigenous peoples who were evicted from national parks, on an appropriate remedy for the violations of their rights, including the option of return to their ancestral lands in the protected areas. The only exception should be if the government can convincingly demonstrate that there are compelling reasons that are non-discriminatory and strictly necessary. Necessity means that it should be solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society;
  - c) Ensure unfettered access to land now falling inside National Parks by people who had been occupying/cultivating this land but lost it to national parks due to floods and changes to the rivers' courses, as seen in the case of the BNP and the Geruwa river;
  - d) The Government of Nepal should provide all those who lost their homes and lands due to the establishment of National Parks and other protected areas, or related issues (such as flooding causing their land to become incorporated into conservation areas) and who cannot or choose not to return to their ancestral lands with adequate alternative housing and land, which is sufficient to ensure their sustainable livelihoods without distorting their traditional ways of life;
  - e) The NPWCA should be revised, if not replaced entirely, to ensure that governance of protected areas is genuinely participatory in line with the Constitution of Nepal;
  - f) Adopt a separate legal framework in relation to buffer zones in compliance with national and international standards concerning Indigenous peoples' rights;
  - g) Harmonize existing laws with the Right to Housing Act and other more recent legislation;
  - h) Amend the Housing Act to include a provision requiring prior judicial permission for any evictions;
  - i) Revisit the role of the Nepal Army in national parks and protected areas and enact clear legal provisions in consultation with stakeholders to limit their function to patrolling and ensure their and the National Park authorities' accountability to the local communities;
  - j) Ensure national park authorities are accountable to relevant local governments and communities;
  - k) Buffer zone committees should be made more representative. All avenues should be explored to ensure that Indigenous peoples, women and other marginalized communities, who are most affected by the national park, have adequate and effective representation on the committees. Efforts must be made to ensure that representation is not limited to tokenism, and that women and members of marginalized communities are not only included in the committee, but are also able to participate meaningfully in decision-making;
  - l) Review the process of receiving compensation for damage to crops and other property by wildlife to make it more effective and ensure that compensation for loss of land or damage to crops and

property is not dependent on individual national parks' revenues. Providing crop insurance to farmers who live around the park would be a possible measure to mitigate this problem;

- m) Ensure prompt and independent criminal investigations into all crimes under national and international law and human rights violations allegedly committed by the Nepal Army and Park authorities in the context of enforcing conservation laws and, if there is sufficient admissible evidence, prosecute them in fair trials before ordinary civilian courts, in accordance with human rights standards of due process.
2. To the Ministry of Forests and Environment, the Department of National Parks and National Park Offices:
    - a) Put in place measures to protect lives, crops, livestock, and property especially in the buffer zones and villages around protected areas from wild animals;
    - b) Ensure timely assessment of damages and adequate compensation against destruction of crops, livestock, property and human life by protected wild animals;
  3. To the National Human Rights Commission:
    - a) Launch a national inquiry<sup>209</sup> in relation to the adverse effects of conservation laws on Indigenous peoples' rights especially in the context of national parks;
    - b) Conduct proactive monitoring of the rights of Indigenous peoples to land, livelihoods and natural resources including in the context of national parks and protected areas;
    - c) Review conservation-related laws and make recommendations to the government for their amendments in line with human rights standards;
    - d) Launch a national inquiry on the *bataiya* system and make recommendations to the government to ensure full compliance with the right against exploitation guaranteed under Nepal's Constitution.
  4. To any future land-related commission
    - a) Ensure the criteria for identification and verification of data in respect of Indigenous peoples' right to land, the rights of people who lost their land due to flooding and rivers changing their course are considered and make these data available to those affected and their representatives for consultation before making decisions regarding land allocation;
    - b) Ensure the independent and impartial functioning and decision-making of the local and district-level facilitation committees, including by creating a mechanism allowing appeals against identification of eligible households and land allocation decisions to the Commission at the central level, with the assistance of a local official designated to facilitate the appeal, where necessary.

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<sup>209</sup> These type of issues falls under the scope of national inquiry under the NHRC Guidelines on National Inquiry in relation to human rights violations 2016.

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# VIOLATIONS IN THE NAME OF CONSERVATION

“WHAT CRIME HAD I COMMITTED BY PUTTING MY FEET ON THE LAND THAT I OWN?”

Nepal has been cited for decades as a “success story” for its efforts to protect wildlife and the natural environment. However, this has come at a high cost for forest-dependent Indigenous peoples. Among the communities most affected are the Tharu, living predominantly in the mid-western part, and the Chepang, Bote, Darai Banariya, Danuwar, and Majhi, living in the central part of the Terai lowland region in the south of the country.

In this report, Amnesty International the Community Self-Reliance Centre (CSRC) unpack the failures of the Government of Nepal to uphold the rights of these Indigenous peoples, focusing on Chitwan National Park (CNP) and Bardiya National Park (BNP), the two largest national parks in the Terai region. Amnesty and the CSRC documented the following human rights violations against Indigenous peoples: forced evictions; denial of rights to their ancestral lands; unjustified restrictions on access to the forests and natural resources on which they traditionally rely, amounting to a denial of access to food; arbitrary arrests, unlawful killings, detention and torture or other ill-treatment by the Nepal Army and National Park personnel protecting conservation areas, and the state’s failure to provide effective remedies to the Indigenous peoples for the many rights violations against them.