



Contested law: Slow response to demands for reformulating protected area legal framework in Nepal

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Acronyms

ACAP	Annapurna Conservation Area Programme
BZ	Buffer Zone
CA	Conservation Area
CAMC	Conservation Area Management Committee
CBD	Convention on Biological Diversity
DNPWC	Department of National Park and Wildlife Conservation
FAO	Food and Agriculture Organization
FECOFUN	Federation of Community Forest Users Nepal
GCA	Gaurishankar Conservation Area
GEF	Global Environmental Facility
HMGN	His Majesty's Government of Nepal
ICCA	Indigenous and Community Conserved Areas
ILCs	Indigenous and Local Communities
ILO	International Labour Organization
IUCN	International Union for Conservation of Nature
KCA	Kanchenjunga Conservation Area
MEA	Millennium Ecosystem Assessment
MOFSC	Ministry of Forest and Soil Conservation
NBS	National Biodiversity Strategy
NEAP	National Environmental Policy and Action Plan
NGO	Non-governmental Organization
NPWC	National Park and Wild Life Conservation
NTNC	National Trust for Nature Conservation
PA	Protected Areas
PARF	Protected Areas Peoples' Rights Foundation
PCP	Participatory Conservation Programme
POWPA	Programme of Work on Protected Areas
UC	User Committee
UN	United Nations
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on Rights of Indigenous Peoples
WCC	World Conservation Congress
WPC	World Park Conference

Abstract

This paper examines the legal framework of Protected Areas (PAs) in Nepal - that includes several types and categories of PAs such as national parks, wildlife reserves, conservation areas and buffer zones. Laws concerning PAs are examined against the contexts of international agreements, conventions, and accepted standards as well as the national ground realities. The legal framework is critically analysed through seven key analytical and inter-related variables: the process of declaration, governance types, power sharing, management plan, tenure and local access to resources, equity and sharing of benefits and compliance and enforcement. We use content analysis, interviews and participant observations as the key methods in securing data. It is observed that many of the legal and regulatory provisions are founded in a different historical context. They have not been timely revised to suit to the current socio-political and ecological realities. The existing legal provisions neither reflect the contemporary conservation discourses and practices nor respond to the popular demands emerged particularly in the post-conflict political dynamics in Nepal.

1. Introduction

Scholarly work on protected area (PA) usually favours analysis of conservation policies – development, implementation, impacts etc. The critical examination of PA legal framework is relatively scant in literature. That is equally so in Nepal where there is a plethora of scientific work on policy analysis, particularly the participatory approaches to PA management. Different levels of legal and regulatory instruments are much influential in shaping the institutional behaviour and everyday practice together with the conservation discourses and policy statements. “*Niyam- Kanun*” (rule- law) of PAs has become a common and popular lexicon beyond the domain of state institution and bureaucracy. In one hand, it has often been an important source and a means to legitimize state imposition, control and exercise of power in the form of ‘sovereign environmentality’ (in Foucaultian notion, Fletcher 2010). On the other hand, it has fostered self-regulation and disciplining of local people in and around PAs, borrowing from Foucault, Fletcher (2010) refers it as ‘conservation governmentality’, more precisely ‘disciplinary environmentality’, that is also termed as ‘environmentality’ by Agrawal (2005). However, at times they have also been contested and resisted by citizens covertly and overtly (Scott 1985) through collective actions in Nepal.

The 1990 constitution as the supreme law of the country had strong and explicit provisions on the biodiversity, particularly the wildlife. The Article 26:4 of the previous constitution of Nepal stipulated the commitment to the environmental conservation and declared, “*The state shall give priority attention to the conservation of the environment ... and also make special arrangement for the conservation of rare animal species, the forest and the vegetation of the country*”. This was largely continued even after the policy change and formation of new republic constitution in 2007. The Article 35:5 of the Interim Constitution of Nepal stipulates,

The State shall make necessary arrangements to maintain the natural environment. The State shall give priority to special protection of the environment and rare wildlife, and prevent further damage due to physical development activities, by increasing awareness of the general public about environmental cleanliness. Provision shall be made for the protection of the forest, vegetation and biodiversity, their sustainable use and for equitable distribution of the benefits derived from them.

The legal framework of PA management in Nepal is largely influenced by the Multilateral Environmental Agreements (MEAs¹). After becoming a member of the United Nations (UN) in 1955, Nepal has been actively participating in global forums and conventions. In order to present itself as a deserving and committed member of the UN and other international agencies, and of course to attract aid, Nepal has endorsed most of the MEAs (Annex III). Consequently, the national conservation policy processes have been obligatory to these agreements, that many of the provisions now have been largely incorporated into the national policy and legal framework. Nepal’s fourth national report to CBD states that ‘the treaties certainly have exerted some influence in the policy of Nepal’ (Belbase 1997, 1999 in MoFSC 2003:34). In his foreword to the Nepal Biodiversity Strategy (NBS) Sher Bahadur Deuba, the then Prime Minister, states: “This strategy (NBS) embodies a strong commitment to fulfil our international obligations as a signatory to the Convention on Biological Diversity”.

¹The major MEAs include: Convention on Biological Diversity (CBD), 1992; Convention concerning the Protection of the World Cultural and Natural Heritage, 1972 (World Heritage Convention); Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973; Ramsar Convention, 1987.

Aid assistance is the major route through which international agenda enter into national policy and legal framework. For example, the National Park and Wildlife Conservation Act (NPWC Act) 1973, - a primary national legislation on affairs of PA - was the outcome of the United Nations Development Program (UNDP)/Food and Agricultural Organization's (FAOs) project entitled, 'the National Park and Wildlife Conservation Project' that began in 1973². The UNDP supported project, Park and People Programme/PPP (later known as 'Participatory Conservation Program'- PCP) helped develop Buffer Zone (BZ)Management Regulation 1996 and subsequent guideline. There are similar experiences with several other environmental policies and plans. For example, the World Bank, in co-ordination with the donor community, pushed for the preparation of National Environmental Policy and Action Plan (NEAP) (World Bank, 1992:18). Following these suggestions, the Nepalese government prepared NEAP in August 1993 with the assistance of the World Bank, the Ford Foundation and IUCN (HMGN/EPC, 1993:v). A similar process was involved in the preparation of major environmental policy documents such as the National Conservation Strategy (HMGN/IUCN, 1988) supported by IUCN and the Nepal Biodiversity Strategy (HMGN/MOFSC, 2002a) supported by Global Environment Facility (GEF) and UNDP .

2. PA legal framework –the debate

There has been a widespread demand to revise and reformulate the NPWC Act conceived and formulated some four decades back at the time of absolute monarchy and autocratic party-less Panchayat rule in Nepal. Leaders and representatives from diverse constituencies such as BZ institutions³, national forum of Indigenous and Community Conserved Areas (ICCAs)⁴, conservation area management committees, Protected Area People's Rights Federation⁵ (PAPRF) and civil society activists all have been raising their voices in various meetings and public deliberations as well as through campaigns, written demands and appeals. For instance, in a meeting organised by the BZ councils, the leaders highlighted how the current legal framework favours PA authority against local institutions: "The regulation has given enormous rights to national park authorities. They can dissolve or form BZ management committees, and most of the wardens have been misusing this power," (THT 2011). The demand for change in legal framework became particularly vocal during the recent contestation and negotiation around Gaurishankar Conservation Area (GCA). The activists on the issue, particularly the FECOFUN –national federation of community forest users' groups- leaders demanded to reformulate the Conservation Area Management Regulations before declaring the GCA formally.

² The involvement of UNDP/FAO in wildlife conservation began since 1968 in Nepal (Heinen and Kattel 1992a). The deployment of FAO affiliated foreign advisors to the government under UN Technical Assistance however began in 1971, the year when the government of Nepal requested FAO towards development of network of PAs in Nepal (Mishra 2010).

³ Buffer zone council leaders met in Kathmandu on 20-21 Oct, 2011. The need for revising the NPWC Act 1973 and the BZ Regulation dominated the discussion. At the end of the meeting, they formed a task force to create pressure for and to engage with authorities in towards the reformulation of the Act. Likewise the concern for reform of the act have also been articulated in DNPWC hosted forum of buffer zone leaders (DNPWC 2009)

⁴ The Third National Gathering of Indigenous and Community Conserved Areas (ICCAs) of Nepal met in Kathmandu on 22-24 December 2011. The gathering demanded for the reformulation of NPWC Act 1973 in order to appreciate and recognise the ICCAs in Nepal. Lobbying with political leaders and MOFSC officials for creating legal space for ICCAs is one of their priority activities.

⁵ "Dissolve current ...Act, and other regulations under the act and form new ones with active/direct participation of local communities and other stakeholders" was the very first demand during the national conference that marked a birth of the national organization of PA affected communities (Jana 27: 2008)

Even the PA state authorities have at times recognised the need to revise the Act⁶ (See box 1). The senior officials at the DNPWC had also initiated the process of reformulation/amendment of the Act quite a few years back following the 2006 movement⁷. During a civil society dialogue on BZ the director general of DNPWC acknowledged the shortcomings of the Act and reasoned delay in its timely amendment as the country is undergoing restructuring with a prolonged political transition (FA and CDO 2011) . However, the motives for revision are diverse. Some are more interested to change the law for putting more provisions for effective control of poaching, while others are seeking governance reform by empowering the local institutions. This has also triggered the debates of governance of natural resources in the context of state restructuring and federalism. Some civil society organizations have also presented an alternative PA act 2011 to communicate their collective proposal on restructuring PA governance. The alternative act aims at diversifying PA governance including ICCAs, empower community institutions and put the role of DNPWC as facilitating agency (Personal communication with Dil Raj Khanal). This means, putting a full range of governance types and provisions for transferring more rights to local people's institutions in BZ and conservation areas; and forest user groups.

Box 1: DNPWC initiatives towards amendment of NPWC Act 1973

DNPWC organized a stakeholder consultation workshop on "Amendment of National Parks and Wildlife Conservation Act 2029" on 5th Bhadra 2064 in Kathmandu. Over 40 participants from Government and Non Governmental Organizations participated ... The objective of the workshop was to solicit suggestions, comments and concerns from concerned stakeholders on the amendment of the NPWC Act..... The suggestions came on different aspects including framing of new Act, recognition of community based conservation, defining clear role and responsibilities of local people, incorporation of management and species conservation action plan. Source: www.dnpwc.gov.np

The historical evolution of Nepal's conservation policies are well documented and analysed (Heinen and Shrestha 2006; Heinen and Kattel 1992b; Sharma 1998). Majority of the scholarly work are focused either on conservation areas (Bajracharya et al 2007, Baral et al 2007) or on BZs (Paudel et al 2007; Budhathoki 2004; Sharma 1998, Nepal and Weber 1994). Most of these analyses appear to be based on policy statements and dominant discourses and at times have been unable to look at the everyday practice. In fact, we argue in this paper that it is the legal and regulatory framework that directly shapes the everyday practice of resources management. Moreover, the regulatory framework shapes the relation between actors, particularly the park authorities and the local communities and their institutions.

Unfortunately, only few studies have dedicated to analyse the PA legal and regulatory framework (Heinen and Kattel 1992a; Heinen and Mehta 1999, 2000; Heinen and Shrestha 2006; Paudel 2007). Moreover, these analyses are more generic and give only a marginal treatment to the governance aspects of the PAs. However, governance issues have become more contested internationally and nationally in recent years. Our current review indicates that a detailed analysis at the national level with adequate attention to governance, rights and social justice issues of local citizens whose lives

⁶ During an interaction in Kathmandu, the Forest Minister explicitly expressed his commitment to initiate the process of revision/reformulation of NPWC Act 1973 and sought stakeholder support for that.

⁷ The DNPWC organised a meeting on 22Aug, 2007 and tabled the agenda. While the authorities opted for specific amendments, many others suggested for a total reformulation of the Act.

are implicated by conservation policies and practices, in the face contemporary international legal frameworks and policy processes are scanty. In order to inform the post 2006 debate on restructuring of PAs, this analysis has focused on the governance aspects- particularly the distribution of power between the state authority, local communities and other stakeholders.

The discussion paper is divided into five sections. This introduction is followed by an analytical framework. The third section brings the provisions in the international conventions that have direct implications to national legal framework. The fourth section brings the details of existing legal and regulatory provisions in about half a dozen of variables. The final section discusses and synthesises the key legal issues.

Table 1: Trajectory of key legal provisions related to Protected Areas (PAs) in Nepal

<i>70s: Period of modern conservation (strict and protectionist paradigm), expansion of PA network</i>	
1973: NPWC Act	Supreme PA legislation, founded growth of PAs in Nepal
1974: First amendment to NPWC Act	Opened PAs for tourism, allowed self defence in case of emergency
1976: Himalayan National Park Regulation	Local concessions in resource access and recognition of enclave settlements
<i>80s: Beginning of community based conservation (participatory) approach</i>	
1982: Second amendment NPWC Act	Allowed increased access to park resources for subsistence use
1989: Third amendment to NPWC Act	Legal recognition of co-managed conservation areas with human habitation
<i>90s: Intensification and consolidation of participatory conservation</i>	
1993: Fourth amendment to NPWC Act	Local participation and benefit sharing in buffer zone
1996: Buffer Zone Management Regulation	Legal provision for buffer zone management and people's institutions.
1996: Conservation Area Management Regulation	Management and governance of Conservation Areas.
Kanchenjunga Conservation Area (KCA) Management Regulation, 2005	Community management of PA
<i>2000 onwards : Period of PA connectivity and trans-boundary conservation</i>	
<i>Terai Arc Landscape (TAL), Sacred Himalayan Landscape</i>	

Analytical framework

Analysis of PA legal framework involves multiple variables. Scholars have used different variables to analyse legal and regulatory frameworks of PA in various countries. For our purpose, we use seven major parameters as the key variables –but not mutually exclusive- for legal analysis. These thematic variables for the purpose of this paper are informed by the perspective of democratic and good governance of PAs⁸. These include: 1) process of declaration, or establishment of PAs; 2) the government types and institutional arrangement; 3) Power sharing between PA authorities and local institutions 4) the process of development and approval of management plans; their implementation;

⁸The paper is informed by a comprehensive concept of PA governance as comprising principles of legitimacy and voice; direction; performance; accountability and fairness (Borrini-Feyerabend et al 2006; IUCN/CEESP 2008)

local participation; 5) Tenure rights and access to resources; 6) benefits sharing arrangements; 7) Compliance and enforcement.

As there are four major types of management regimes within the PA system in Nepal, we will examine these variables (Annex 1) in each of the four regimes (state managed national parks and wildlife reserves; collaborative management of conservation areas and buffer zones). These variables will then be examined against the existing international provisions, norms and good practices and also against the national scenario.

3. MEAs, international norms and good practices on Protected Areas

Provisions in the MEAs, international norms and good practice provide a good basis against which domestic PA legal framework can be assessed. For the purpose of this analysis, we take World Park Congress, Programme of Work on Protected Areas of the UN Convention on Biological Diversity (CBD) and IUCN resolutions from the latest World Conservation Congress, 2008, acknowledging other significant international legal instruments such as, International Labour Organization (ILO) Convention number 169 and United Nations Declaration on Rights of Indigenous Peoples (UNDRIPs).

3.1 World Park Congress

World Park Congress (WPC) –previously known as World Conference on National Parks, are the largest gatherings of conservation professionals, government delegates, development agencies and civil society organisations. The Congress is held in every 10 years to review the current approaches/strategies, revisit the implementation challenges and explore strategies for more effectively achieving and combining conservation and livelihoods/poverty goals. These congresses are therefore regarded as “...the defining moments. They capture new concepts and in retrospect reveal paradigm shifts in thinking, policy and action towards PAs” (IUCN 2010: 5). A close assessment of the historical evolution of the WPC shows gradual shifts in paradigm and discourses that now fully acknowledge and emphasise the social-cultural and human aspects of conservation. Since the Bali Congress (3rd, WCS 1982), “PAs professionals began to give higher priority to people-related aspects such as human development, partnerships, and indigenous groups and local communities.” (IUCN 2010: 6). PAs were increasingly considered as places that would yield benefits to the local communities beyond their intrinsic conservation values. The changing themes of the WCS clearly indicate the growing emphasis on delivering benefits beyond the PA themselves.

Table 2: WCS and their themes

Date	Event	Theme
1962	WPC, Seattle ⁹	-
1972	Yellowstone (USA) ¹⁰	<i>National Parks “A heritage for better world”</i>
1982	Bali (Indonesia)	<i>Parks for Development</i>

⁹ It aimed to encourage further development of the national park movement on a worldwide scale and problems of park management; there was also a key discussion on ways to classify and categorize PAs

¹⁰the needs and benefits of public support for national parks and equivalent reserves was also among the key agenda, “it consolidated world wide experience in park policies and management approaches, and marked a shift towards a more professional form of management” (IUCN 2010)

1992	Caracas (Venezuela)	<i>Parks for Life</i>
2003	Durban (South Africa)	<i>Benefits beyond boundaries</i>

WPC: World Park Congress

Source: IUCN 2010

The ‘governance’ of PA and issues of indigenous peoples¹¹ and local communities found prominence during the 5th World Park Congress (WPC) in 2003. The congress is often perceived to have marked a global paradigm shift in PAs in the domain of conservation. The 5th Congress adopted the term “*new protected area paradigm*” that recognised the rights in relation to establishment, governance and management of PAs (Stevens 2010). The important outcomes and recommendations of the WPC were articulated in the form of Durban Accord that among others embodies principles and essence of social equity, justice, rights, participation and livelihood concerns and of governance in relation to PAs.

3.2 Convention on Biological Diversity

The outcomes of 5th WPC influenced the CBD processes, as many of the WPC recommendation found their way to the 7th conference of parties (COP) to CBD in 2004 that adopted the Programme of Work on PAs (POWPA) (Stolton et al 2008). “The POWPA is a framework for co-operation between governments, donors, NGOs and local people’ (Ibid: 3). The four key elements of the POWPA include: 1) Direct actions for planning, selecting, establishing, strengthening and managing PA systems and sites; 2) Governance, participation, equity and benefit sharing; 3) Enabling activities; 4) Standards, assessment, and monitoring

The 5th WPC and POWPA that was adopted by the 7th COP of CBD based on the recommendations of the WPC are considered landmarks towards a paradigm shift in international policy processes in PA management (Balasinorwala et al 2004). Programme element 2 on ‘*governance, participation, equity and benefit-sharing*’ is one of the key components that underpin the discussion specific to this paper. Issues such as rights, participation and benefit sharing in relation to ‘indigenous and local communities’, which are central to the notion of democratic governance of PAs are embodied in this element. The element 2 of the POWPA has been the key focus of civil society groups and professionals that provides the avenues for democratising PA governance.

COP 10, special

The decision of the most recent 10th COP to the CBD at Nagoya on PAs (UNEP/CBD/COP/DEC/X/31)¹² has further acknowledged the importance of POWPA and provided further impetus with crucial decisions. Among others those relevant to the focus of this paper is briefly outlined below:

Table 3: Key highlights of CBD COP 10 on PAs

Elements	COP 10 Decisions on PAs
Declaration, consultation, FPIC	Mechanisms and processes for “full and effective participation” of indigenous and local communities (ILCs) related to PAs;

¹¹Although the UN CBD texts and decisions uses the term ‘indigenous and local communities’, on the contrary we use the term ‘indigenous peoples’ to recognize and respect the claims of collective identity by the international movement of indigenous peoples.

¹²www.cbd.org

Governance types and institutional arrangement	Improve, diversify, and strengthen governance types such as co-managed and recognition of role of “indigenous and local community conserved areas” in conservation.
Power sharing	Embedded in the language of governance of PAs.
Management plan – development and approval; implementation, local participation	Participation of ILCs in key PA decisions. Full and effective participation of ILCs in governance of PAs. Include ILCs in multi-stakeholder advisory committees, in consultations for national reporting on the POWPA, and in national reviews of the effectiveness of PAs.
Tenure rights, access to resources	Largely embodied in the language of “ <i>full respect of their rights</i> ” and “governance of PAs”
Benefit sharing and equity	Incorporated into Element 2 of POWPA; role of PA in poverty alleviation and livelihoods of indigenous and local communities. Mechanism and processes for equitable cost and benefits sharing
Compliance and enforcement	None

The COP decision urges to take note as appropriate of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIPs) for further implementation of the POWPA. In addition to this, it recognizes the need to “establish effective processes for the full and effective participation of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, in the governance of PAs”. Actions under Element 2 are to be undertaken by the parties in the governance of PAs, consistent with national law and applicable international obligations.

<p>Target 11: By 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of PAs and other effective area-based conservation measures, and integrated into the wider landscape and seascapes</p> <p>Target 18: By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels</p> <p>Source: CDB New Strategic Plan 2011-2020 and Aichi Targets</p>

3.3 IUCN World Conservation Congress (WCC)

WCC is perhaps the largest global conservation gathering hosted by IUCN. The members’ assembly of IUCN during WCC generates important resolutions for both the members and the IUCN. The fourth WCC (2008) witnessed a total of 138 resolutions and recommendations were approved by the general assembly. Some of the more pertinent issues with global significance, so far as rights and concerns of indigenous peoples and local communities are concerned, are listed below with its respective essence. These endorsed resolutions also hold their significance nationally since the

DNPWC represents Nepal as one of the state members of IUCN. A rough overview of these resolutions gives a strong sense of rights of indigenous peoples and local communities.

Table 4: Some of the IUCN resolutions during WCC 4

Resolution	Key highlights
Recognition and conservation of sacred natural sites in PAs (4.038)	Sacred natural sites of indigenous communities as one of the oldest forms of ‘culture based conservation’; towards recognizing of rights, knowledge and skills of local and indigenous custodians, supporting their sites.
Implementation of the Durban Accord (4.048)	Calls on governments to reform national legislation, policies and practices to fully realize the relevant parts of the Durban Accord, CBD POWPA, UNDRIP.
Support ICCAs (4.049)	Calls member states in recognizing and supporting ICCAs
Implementing the UNDRIP (4.052)	UNDRIP endorsed by IUCN general assembly and calls members to adopt the same.
Integrating culture and cultural diversity in IUCN’s policy and programme (4.055)	Urges members and conservation community to apply principles in their work and develop policies towards ‘improved understanding of the relations between culture, cultural diversity and biological diversity’.
‘Rights-based Approaches to Conservation’ (4.056)	Calls on members to “where possible further fulfilment of human rights, tenure and resource access rights, in conservation policies and laws
Conservation and poverty reduction (4.058)	Endorse the principle of “ <i>do no harm</i> ” in relation to policies and activities of conservation

Source: IUCN 2009

Review by Forest People’s Program (FPP) about IUCN’s resolutions (from 1975-2004) that are of direct relevance to indigenous people shows “...that the union has affirmed the need to respect the rights of indigenous peoples in PAs and wider conservation strategies for over 30 years. This fact contrasts rather shockingly with the actual experience of indigenous peoples whose rights continue to be ignored and violated in the establishment, management and enforcement of conservation projects and PAs.” (3) Inadequate implementations on the ground despite the attention to indigenous people’s rights since 1975 has also reiterated its recent press release (FPP 2011). However, these resolutions articulate strongly the contemporary debates and thinking on people and PAs.

4. Analysis and discussion

4.1 PA declaration

The authority to declare a new PA or expand the existing one is important legal rights and is largely defined by formal legal framework. The declaration or expansion must be backed by the national legislation so that it can garner required legitimacy and acceptance from stakeholders including local communities. However, the legal framework should recognise the possibility that the voluntary

conserved areas may become part of the formal PA system. Such areas may have either been managed by the local and indigenous communities or have high conservation value but currently lack any recognised conservation regime. If the communities want such areas to be managed as PA, they can negotiate with the authorities, reach to an understanding and can take responsibility of managing such sites as ICCAs (Lausche 2011: 150).

Nepal's current legal framework however provides sole authority of declaration of PA to the government and does not provide any spaces for local communities or private bodies. Article 3.1 of the NPWC Act 1973 (HMG/N 1973) –, reads:

His Majesty's Government may, if it deems necessary, declare an area as a national park or reserve or conservation area by publishing a notice in the Nepal Gazette and indicating the boundary thereof.

Similar provision exists for declaration of the BZs (HMG/N 1973: 3a.1)

His Majesty's Government may declare any peripheral area of a national park or reserve as a buffer zone by publishing notification in the Nepal Gazette and indicating the boundaries thereof.

There are two important elements here in these legal provisions: i) the government is the only authority that can declare and enact PAs or the BZs; ii) the government whenever it deems necessary can declare any site as PA and no procedural conditions are attached to it. There is no space at all for free and prior informed consent of the local communities and indigenous people as stipulated in ILO 169, UNDRIP or CBD (POWPA).

Unfortunately, no major changes in transforming the governance structure have been made since the NPWC Act was first issued in 1973. There have been four amendments during this period mainly to incremental relaxing of the original restrictions. For example the first amendment allowed local people to extract thatch grass in some Terai PAs. In fact, restricting collection of thatch grass created a major park-people conflict in Chitwan as it was the key material used to thatch their roofs. The second amendment (1982) relaxed provisions related to tourism management and managing wildlife including dealing with attacks from wildlife. This amendment opened the concept of conservation areas as IUCN category VI site and allowed it to be managed by National Trust for Nature Conservation¹³ (NTNC). The fourth amendment introduced the idea of BZ with redistribution of conservation benefits but imposed more protection oriented regime outside the existing PAs (now BZs). The proposed Fifth Amendment during former King Gyanendra's regime in 2006 towards a provision of private governance of PA was controversial (Ghimire 2006), therefore never implemented.

The analysis of the legal provisions shows that the government has monopoly over establishing, changing the borders, expanding or withdrawing PAs. The law does not recognise any other actors or agencies who may like to establish and manage PAs under any agreed governance framework and management criteria. It particularly restricts any possibility of voluntary protected area particularly by the indigenous and local communities. While hundreds of such sites exist in the country, they are suffering from lack of legal recognition and government support (Jana and Paudel 2010; Rai 2011).

Another critical issue is the legal silence on the process of declaring new PAs. While full authority is vested with the government, no condition or procedural guidelines exist. Due to the lack of any mandatory procedure for declaration, establishment of new PAs had remained contested in the past.

¹³ Formerly known as King Mahendra Trust for Nature Conservation (KMTNC)

There is no fundamental change in the way PAs are established whether it was in 1970s or in 2010. Though some level of consultation has been embedded in the process, the consultation has remained too technocratic; manipulative and instrumental in the absence of mandatory obligation (Annex4).

4.2 Governance types/institutional governance

Fifth WPC recognized indigenous peoples and local communities as an important actor (not only a mere stakeholder) other than state and conservation NGOs. The same has been reflected in POWPA. Governance by indigenous peoples and local communities as a separate '*governance types*' has also been incorporated in the IUCN PA management categories and governance types matrix, along with a shared governance (collaborative). As mentioned in the previous section, CBD COP 10 decisions also recognized the need to improve, strengthen, and diversify governance types (including "indigenous and local community conserved areas") and implicit in the new Strategic Plan and Aichi Targets.

Remarkably, under the current legal framework, Nepal has a diversity of management and governance modalities of PAs. Despite PAs are governed by DNPWC, a government authority; there are community based conservation areas¹⁴; collaborative governance of BZs in national parks and wildlife reserves; government controlled Api Napa Conservation Area as well as one governed by indigenous peoples and local communities i.e. Kanchenjunga Conservation Area (KCA). However, as seen against the totality of PA system, those under shared and community governance constitute only a handful of examples. Majority of PAs (such as national park and wildlife reserves) are governed and controlled by the government. Possibility of co-existence of diverse governance types in landscape or ecosystem constituting a single or network of PAs are not enshrined in current legislations.

A critical review of regulation and guideline of BZ area indicate absolute authority of park 'Warden' in affairs such as division of buffer zone areas into several units for the purpose of management and formation of local people's user committees. Moreover, the Warden - who also acts as a member secretary of the buffer zone management committee has the authority to dissolve the people's institution¹⁵, a provision that has been highly criticized by civil society and organizations (See Annex 5). The concerns regarding autonomy of the buffer zone institutions have been raised time and again by leaders and representatives of buffer zone sometimes even strongly demanding dissolution of the law (THTa 2011). Collective resolutions for timely reform of the national legislation among others towards clarity of roles, rights and responsibilities of buffer zone management people's institutions have also been articulated during meetings of the network buffer zone management committee chairpersons meetings (DNPWC 2009).

Inclusion of a soft category of PA referred as "Conservation Area" after the third amendment of *NPWC Act* is often viewed as one of the milestone in community based participatory conservation in Nepal. Management of Conservation Areas¹⁶ can be entrusted to "any institution established with the objective of conserving nature and natural resources for the period prescribed in such notification". This provision has provided a legal framework for shared governance of several

¹⁴ Such as Annapurna Conservation Area; Manasalu Conservation Area; Gauriskhanar Conservation Area

¹⁵ Article 14.1 of Buffer Zone Management Regulations 1996.

¹⁶ Article 16.b of NPWC Act.

conservation areas between National Trust for Nature Conservation (NTNC) and local peoples' institutions such as conservation area management committee (CAMC). With an exception of KCA, an apex body or collective institution of CAMCs to influence and negotiate decision making and policy affairs of conservation areas collectively at par with NTNC is nonexistent. There are no legal provisions envisaging such collective institutions such as BZ Management Council in case of BZ areas in Nepal. Likewise, with the legal provisions such as '*Government Management on Conservation Areas Rules, 2000*', the government has legitimised the control of conservation area such as the case of recently declared Api Nampa Conservation Area.

Arguably, dismissal of the elected bodies by the bureaucratic institutions is at the heart of the governance types. As long as the DNPWC or the park authority has the sole authority to dismiss elected local institutions those bodies cannot enjoy full autonomy. However, according to the KCA regulation the DNPWC can dismiss the council on the grounds that it fails to perform its duty properly (KCA regulation article 25:1). However, if the Council is not happy with the decision they can appeal to the MoFSC whose decision would be final KCA regulation article 25:5).

Nepal is generally regarded to be making a good progress towards participatory conservation. Beginning with Annapurna Conservation Area Project (ACAP) in mid 1980s, that followed BZ programme (early 1990s) and later with KCA (2005) the conservation policies appear to be favouring active role of community institutions in the management of the PAs. However, there is little progress from participation debate to actually governance questions. Currently, as mentioned above, there are several management arrangements (government managed, quasi government conservation agency (NTNC) managed PA and community managed PAs). However, these broad categories are rather artificial and government is the centre in all these PAs. The NTNC is a government controlled entity¹⁷ though it functions outside the formal government bureaucracy and has adopted a more participatory approach in conservation. Similarly, the handover to local community in case of KCA is also more a glamour of radical participatory discourse and less of genuine devolution of power to the local community. The BZ programme is often claimed to be a co-management, but in practice it is largely a satellite programme of PA authorities. Therefore, Nepal's legal system remains conservative in terms of diversifying governance types by recognising, supporting and encouraging diverse types of PAs.

4.3 Power sharing between PA authority and local institutions

The distribution of power between the government PA authority and diverse types of local institutions is the central focus of this analysis. During the course of participatory policy evolution of last three decades, diverse types of local institutions are being promoted to share power with local communities. The specific transfer of power to local communities is based on the particular regulatory provisions. Creation of conservation areas, as different types of PA and constitution of CAMC is regarded as an important milestone towards participatory conservation. However, analysis of the distribution of power between PA authority (NTNC in this case) and the CAMCs shows that rights are not adequately transferred to the local community institutions (**Error! Reference source not found.**). There is no apex body or collective council of CAMCs. The conservation authority through its conservation officer controls the formation and composition of CAMC. He/she can also dissolve the CAMC. The people's institutions are conceptualised as if they are formed to help the

¹⁷ The Prime Minister nominates the Chair and the Chair nominates all the members of the Board. The MoFSC usually chairs organisation who nominates all the members and member-secretary. Therefore, unlike the NGOs in Nepal, it is hardly an independent entity.

conservation authority. The conservation officer on behalf of the PA authority plays the CAMC secretary, inspects the financial documents. It is surprising that all the property of the CAMC is automatically the property of the PA authority (NTNC).

The situation is much better in case of KCA (**Error! Reference source not found.**). Here the local communities enjoy the full rights to form the KCA Management Council (apex body of CAMCs). Moreover, the Council have the rights to raise revenue and spend as per their own priority. However, the Council requires getting approval of its management plan from the MoFSC. More importantly, the DNPWC can dissolve the locally elected council. Though the council can appeal to the Ministry, its decision is the final and must be complied with. There is huge uncertainty on the tenure security of the conservation area, as the DNPWC can withdraw and dissolve the KCA any time whenever it feels that the council is not fulfilling its expected duties (Article 25.1)

The government introduced the BZ programme in 1996 from Chitwan National Park, which now has been expanded to all the national park and wildlife reserves. Redistribution of PA revenue to the local communities for their socio-economic wellbeing and involving local people in resources management through decentralised governance are the key features of this scheme. However, the analysis of the BZ regulation 1996 shows that the PA Warden have become too powerful in managing BZ affairs (**Error! Reference source not found.**). As the table shows Wardens form and dissolve the user committees and the forest user groups. Though they can appeal to DNPWC, its decision is final and they cannot go to the court. Similarly, the Warden can inspect the account any time and will approve the intermediary transactions or the final accounts (See Annex 9). Heinen and Mehta (2000) have also argued the management regime of BZ as coercive and expansion of power of DNPWC via warden.

Analysis of the legal provisions with the above three scenarios help us make some broad observation on the power sharing in collaborative or co-managed arrangements of PAs currently in place in Nepal. It appears that the locally elected institutions are too weak in front of the government's bureaucratic institutions and designated conservation authority (NTNC). It seems that the local institutions are designed to serve the Ministry, Department or the NTNC in carrying out their conservation functions. The local institutions have little autonomy to constitute themselves, to raise and mobilise their revenue and particularly to enjoy the security of tenure (of resources, or of their own positions).

4.4 Management plan development, approval and implementation

PA management plans are usually legally mandatory. A number of MEAs have made it mandatory to manage every PA based on management plans or any documented management system. For example, the CBD POWA has explicitly demanded parties to develop management plans for all PAs.

All PAs to have effective management in existence by 2012, using participatory and science based site planning processes that incorporate clear biodiversity objectives, targets, management strategies and monitoring programmes, drawing upon existing methodologies and a long term management plan with active stakeholder involvement (CBD COP 2004 VII/28, goal 1.4).

Similarly, the world heritage convention 1972 also urge state parties to develop management plan with components of clear cycle of planning, implementation, monitoring/evaluation and feeding

back to the planning process. There is defined resource allocation system and that the stakeholder and local communities should have adequately understood and supported it.

As a general rule, management plans should be backed by the legal provisions with sufficient elaboration of the contents, process of drafting and approval and providing respective authorities to implement this.

It is interesting to note that there is no term of *management plan* as such in the NPWC Act 1973. In only one instance, the term integrated plan is used to define Conservation Areas. This is an indication of protection orientation in Nepal's PAs. However, the term is more frequently used in BZ Regulation 1996 and Conservation Area Management Regulation 1996.

The BZ programme is generally regarded as the shift towards a decentralised and participatory management of PAs. However, from the examination of the process of management plan development and its approval, it becomes clear that this is simply the extension of Warden's authority to the BZ. The BZ Management Regulation 1996 explicitly empowered the PA warden to develop the management plan and submit to the DNPWC for approval. Based on DNPWC's recommendation, the MoFSC can approve the management plan. Article 3b of the NPWC Act 1973 (1993) reads: *The Warden shall carry out works relating to the management and conservation of the BZ (HMG 1993 article 3b)*. This is further reinforced in the BZ regulation which reads: *The warden shall prepare and submit BZ management work plan to the Department (MoFSC 1996: article 5:1) (See Annex 6)*. It is good that responsibility of preparing local level management plan lies with the local user committees (UCs). The UCs will develop work plan for its working area considering the conservation and development activities and get it passed by the users (BZ regulation 1996: article 13:1). However, these plans are only raw materials for the park warden to prepare the PA level management plans. As the BZ Guidelines 1999 explicitly mentions it: *'While preparing the BZ Management Work Plan, the Warden should consider the work plans prepared by the [user] committees'* (BZ Guidelines: article 6:1). Here the word '*consider*' is important as it shows that the management plan developed by the user committees are not the final plan but will provide good basis to Warden for developing his/her plans.

There is a similar situation in conservation areas of Nepal. The designated conservation agency finally approves the management plans endorsed and submitted by the head of the conservation area after consultation with "conservation officers" (Article 15 of CA regulation). The village level management plan is prepared by CAMC and submitted via conservation officers to the head of the conservation area for endorsement. Likewise, in the case of KCA which is regarded as the PA governed by the local communities. Here the management plan developed and passed by the council has to be submitted to the MoFSC through the DNPWC. The MoFSC can approve this as it is or can revise and provide approval without asking the council (KCA regulations: article 6:8). It appears that, the final content of the management plan is not a mutually negotiated document; rather it is the version that is approved by the MoFSC.

4.5 Tenure rights and access to resources

The new 2020 target of the CBD has an important language of traditional '*practices of indigenous and local communities*' that are pertinent to conservation and sustainable use of biodiversity conservation and respecting their "*customary use of biological resources*". Local people's rights or access to resources (land, forest, aquatic) is perhaps the most prominently reflected in Durban Accord) and Element 2 of POWPA (See the section on WPC). Of equal significance is the language of CBD COP 10 in the context of governance of PAs such as-

“.....*in full respect of their rights and recognition of their responsibilities*[indigenous and local communities]”
(Text in the brackets added).

IUCN’s resolution (WCC, 2008) on ‘rights based approach to conservation’ with strong human rights dimension recognizes that conservation can affect human well being and affected human rights among others “impacts on local livelihoods”. It calls on IUCN towards ‘...*where possible further fulfilment of human rights, tenure and resource access rights, and/or customary rights*’ in the context of conservation.

There are diverse practices and provisions in several regulations governing several modalities of protected areas in Nepal (See Annex7 and 8 for further details). They differ so far as local access to forest resources; collective forest tenure; access to timber and aquatic resources such as fish; extraction of sands and boulders are concerned. An overall impression is that the local access and concessions – not as ‘rights’ on resources - are more favourable in the BZ and conservation areas, and to some extent controlled access in higher altitude PAs. However, stricter regulations are in place in lowland national park and wildlife reserves despite nominal concessions on access to thatch grass (couple of days in a year) and fishing for indigenous groups traditionally earning livelihoods through fishing with regulatory provisions, and granting controlled access for collection of wild vegetables and drift wood collection in practice. The language of ‘rights’ is largely absent in national legislation and regulations. Authority concerning granting of concession and rights to access resources for locals are vested upon the wardens and head of the agency (such as in case of conservation areas) entrusted with management and administration authority. The autonomy of community forests in the BZ has also become contested.

4.6 Equity and benefit sharing

Benefit sharing is one of the three pillars of CBD. The preamble of the text of CBD clearly states “...*sharing equitably benefits arising from the use of traditional knowledge, innovations and practices*...”. Likewise *article 8j* is concerned to with ‘equitable sharing of the benefits’. Of utmost significance is the language of new CBD Target 11 “.... effectively and equitably managed....” in the context of systems of protected areas and their coverage.

Element 2 of POWPA, specifically incorporates “equity and benefit sharing” in connection to the PAs. The COP 7 decision concerning POWPA under its goal 2.1 - *To promote equity and benefit-sharing*, had targeted establishment of mechanism for the equitable sharing of both costs and benefits arising from the establishment and management of PAs” by 2008. Among others the suggested activities to the parties included assessing the “economic and social cultural costs, benefits and impacts” in relation to PAs and strengthen national policies to deal with “ access to genetic resources within PAs and fair and equitable sharing of benefits” resulting from their utilization (COP7 decision). The COP 9 decision further drew attention to implementation of element 2, provided further impetus to this by encouraging parties to “*Further develop and implement measures for the equitable sharing of both costs and benefits arising from the establishment and management of PAs consistent with national legislations and applicable international obligations*” This was further recalled by COP 10 decision. In addition to this, it invites parties to “Establish clear mechanisms and processes for equitable cost and benefit-sharing related to PAs, in accordance with national laws and applicable international obligations; as well as to stress its integration in governance of PAs and emphasises the role of PAs in poverty reduction and livelihoods of indigenous and local communities.

The provision of sharing 30-50 percent revenue of the park with the locals enshrined in the principal legislation of PAs and the BZ is one of the important legal aspect accruing benefits to local citizen. These emerged in the face of increased conflicts between local people versus wildlife and PA authorities, in fact realization on the part of state about local costs of conservation. The equity and distributive justice of benefits to poor and marginalized social groups with differential needs and dependence on natural environment, disproportionate cost of conservation have been a much contested reality. On ground experiences and local grievances also suggest that the flow of economic incentives and funds to BZ user committees is uniform and unjust so far as disproportionate burden or costs borne by groups and households within a village; or between villages. The current legal framework does not envisage socially equitable sharing of benefits.

In case of CA, revenues generated are centrally collected with the designated conservation agency' managing it. All the revenues earned and royalties generated by the CAMCs belong to the agency”(Article 26.1). These revenues would be channelled back to the local people for conservation and development. The situation is better in KCA, in which the management council have control over the earnings and royalties generated in the CA. The issue of equitable sharing of benefits between local people and state on matters of revenues from mountaineering and expeditions have been a contentious issue.

Likewise, the promotion of nature based tourism or ecotourism with respect to PAs and their direct benefits to local population facing the cost of conservation remains a critical issue, and requires in-depth assessment. Although the management effectiveness of PAs is a critical task, comprehensive social assessment of costs and impacts of PA on local people is still lacking in both law and practice.

Section 16c of NPWC Act has a provision of reasonable compensating for the loss of house or land of a local resident inside the BZ falls within the “existing natural boundary of a national park or reserve as a result of flood or landslide”. However, there are both numerous occasions where such victims are still languishing empty handed and cases where locals have been compensated such as in case of Chitwan National Park. Wildlife Damage Relief Guideline, 2009 is a much awaited respite for wildlife affected communities and victims, after many years of struggles and sufferings. However, actualization of its provision has challenges.

4.7 Compliance and enforcement

Effective enforcement of rules in PAs depends largely on voluntary compliance, self-regulation and incentives for cooperation. Higher level of compliance automatically ensures effective enforcement of any PA rule. It also substantially reduces the cost of enforcement. Stakeholder participation and involvement of local communities help increase compliance and cooperation with the PA authority (Lausche2011:186). Similarly, strong collective action at the community level induces self-regulation (Ostrom 1990) which in many cases complements external enforcement. Similarly, policy incentives linked with level compliance also decrease enforcement cost. Therefore, threat of prosecution and punishment are not the only strategies to achieve higher level of Compliance.

In situation where there is already a strong local collective action, the cost of enforcement can be substantially reduced simply by promoting such practice. Moreover, where there is direct incentive for biodiversity conservation or sustainable resources management, the level of compliance can be increased simply by making the incentive more explicit. In many of the cases, compliance level can be increased by engaging in consultation, negotiation and education. In such situation promoting compliance may be preferred as compared to pursuing enforcement actions. This is particularly

important in situations where the authorities do not have adequate resources for effective enforcement.

In case of voluntary conserved areas (e.g. ICCAs), the legal provisions should recognize that community surveillance and enforcement mechanisms developed by democratic means may be used. It is also important that the local communities should be authorized in making further rules or changes in responding to the changing situations and negotiations. (Lausche2011:187)

The current legislations vest immense authority over the PA administration on enforcement and cases of violation of regulation of the PA. Article 25.5 of NPWC Act states “The prescribed court or official shall have the power to hear and dispose of cases under this Act”. Similar provision exists for BZ, “The warden shall have the power to hear and make decision on the cases of crime related to the management and conservation of BZ declared... (BZM Regulation, Article 40:1). The judicial authority of PA wardens on matters of wildlife related offences (such as poaching) has been contested and criticized on since the same legal authority enforcing the rule makes an arrests, investigate the case, filing a legal charge against the violator and make a judicial decision. In case of CA and KCA, the official of DNPWC has such judicial authority on legal cases pertaining to wildlife protected by NPWC Act. However, in other affairs concerning violation of rules KCA, the council retains such authority.

5. Synthesis and Conclusion

The legal and policy framework constitute a whole range of law, regulations and guidelines. Several amendments in the NPWC Act 1973 and formulation of subsidiary regulatory instruments have attempted to respond to the changing international conservation policy processes and discourses as well as domestic realities and factors. As in Table 1, the evolution of PA laws indicates a paradigm shift towards participatory approaches and accruing local incentives and concessions. In general, diverse types of PAs are promoted to fit to the different socio-ecological contexts of the mountains and lowland Terai. Different approaches have been promoted to garner local support and get their active participation in the conservation activities. Linking conservation with development and increase livelihood opportunities have been the key strategies. The redistribution of PA revenue through BZ programme and community based CAs has taken these approaches. The case of KCA presents even further step to transfer more rights and responsibilities to the institutions of local people, perhaps the most progressive arrangement of community governance of PAs in Nepal and South Asia.

Based on our analyses, we saw that the government has the monopoly as well as unilateral authority over deciding and declaring PAs with no mandatory procedural obligations. Given the legal silence, we conclude that there is no fundamental change in the way PAs are established and expanded since it first began four decades back in 70s, and continues to breach the free, prior and informed consent of local citizens.

Despite the variety of governance types of PAs, the government manages and governs most of the PAs with an exception of KCA. CAs is either entrusted to one exclusive quasi government conservation agency (NTNC) under a so called shared-governance arrangements with local institutions are controlled by the agency and the government. There are no legal spaces for voluntary PAs, neither ICCAs nor private ones. The law appears blind to indigenous and traditional institutions and their contribution to resources conservation.

The power sharing between the unequal techno-bureaucratic authority (DNPWC and NTNC) and local citizens in collaborative governance arrangements (BZ and CA) reveal that locally elected institutions are actually weak in power relation. The relationships between actors are shaped not by coercive forces but by techno-bureaucratic practice. The management plan, operational plan, audit and other financial documents have often functioned as the new instruments to control the local practice since the regulatory provisions often demands exhaustive paper works and mandatory approval from bureaucratic authorities. Such provisions are deeply disempowering to the local communities and their institutions.

Management plan as a term is absent in the chief legislation although used in subsequent legislations of CAs and BZs. While the locals have no say in core areas of PAs; the final authority of approval is vested upon the bureaucracy (in BZ) or with the NTNC (CAs). There are no adequate room for negotiation in the final document at the highest level. Even in the community governance of KCA, such plans have to be finally endorsed by the MoFSC.

There is a diversity of regulatory provisions and practices so far as local access to resources and tenure rights are concerned. BZ and CAs have more favourable provisions than lowland PAs with stricter regulations although there are concessions for thatch grass and wild vegetables collection for locals and fishing for indigenous groups. There are provisions for controlled local access to resources in higher altitude PAs.

Incentives and sharing of benefits in BZ and CAs have been considered as progressive legal aspects of PAs in Nepal. The current legal framework does not envisage socially just sharing of benefits given the disproportionate burden or costs borne by locals and social inequalities. No comprehensive mechanisms and practice on social impact assessment of cost and benefits to locals exists in the law. While the NTNC controls the earning in CAs, KCA has much better community control.

State controlled, centralized and bureaucratic enforcement mechanisms and actions have generated much controversy and local conflicts. The experiences of community based anti-poaching units also indicate effectiveness of community oriented actions rather than conventional state controlled ones, questioning of role of army given the financial cost and other constraints, community oriented enforcement mechanisms are imperative. The emerging concept and practices of “bio-cultural community protocols¹⁸” has been considered significant towards implementation of national and international laws while exercising rights and enhancing capacities (Bavikatte and Jonas 2009).

In summary, the legal and regulatory system is far behind the post conflict political discourses of democratic society, inclusive governance and state restructuring. The legal provisions have not fully respected the international norms, principles and good practices. Consequently, there are huge gaps between the policy rhetoric and everyday practice of resources governance and management. The legal system also fails to recognise many of the international conventions such as CBD POWPA, ILO-169 and UNDRIP, thus PA reform remains a pressing challenge ahead.

¹⁸It is “a protocol that is developed after a community undertakes a consultative process to outline their core ecological, cultural and spiritual values and customary laws relating to their TK and resources, based on which they provide clear terms and conditions to regulate access to their knowledge and resources. (Ibid : 9)

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Annexes

Annex 1: Matrix showing key variables against the major types of PA management regime

SN	Variables	Existing provisions	International norms, good practice	National political mandates & socio-economic contexts
A	Declaration, consultation, FPIC			
B	Governance types and institutional arrangement			
C.	Power sharing between PA authority and local institutions			
D	Management plan – development and approval; implementation, local participation			
E	Tenure rights and access to resources			
F	Benefit sharing and equity			
G.	Compliance and enforcement			

Annex 2: Protected Areas and Wildlife Conservation Act 1973 and its Amendments

- First Amendment to the National Parks and Wildlife Conservation Act, 1974
- Second Amendment to the National Parks and Wildlife Conservation Act, 1982
- Third Amendment to the National Parks and Wildlife Conservation Act, 1989
- Fourth Amendment to the National Parks and Wildlife Conservation Act, 1993

Annex 3: Regulations under Protected Areas and Wildlife Conservation Act 1973

- National Parks and Wildlife Conservation Rules 1974
- Royal Chitwan National Park Rules 1974
- Wildlife Reserve Rules 1977
- Mountain National Parks Rules 1979
- King Mahendra Trust for Nature Conservation Rules 1984
- Khaptad National Park Rules 1987
- Buffer Zone Management Rules 1996
- Royal Bardia National Park Rules 1996
- Conservation Area Management Rules 1996

Annex 4: Provision about Declaration, consultation, FPIC of PAs in NPWC Act1973

<p>[Article 3.a (1)]: His Majesty's Government may declare any peripheral area of a national park or reserve as a buffer zone by publishing notification in the Nepal Gazette and indicating the boundaries thereof.</p>
<p>[Article 3.a (2)]: His Majesty's Government may, abandon or transfer the ownership, or alter the boundaries of the buffer zone prescribed under the sub-section (1) by publishing notification in the Nepal Gazette.</p>
<p>[Article 16.b]: His Majesty's Government may, by publishing a notification in the Nepal Gazette, entrust the management of any conservation area declared under the sub-section (1) of the section 3 to any institution established with the objective of conserving nature and natural resources for the period prescribed in such notification.</p>

Annex 5: Provision about Institutional Arrangements

1. Buffer Zone Management Regulations 1996
[Article 8 (1)]: The warden may form necessary users' committees in co-ordination with the local authorities to assist community development and balanced utilization of forest resources, and the conservation of the elements mentioned in the Rule-7 in the units divided under the Rule-4.
[Article 14 (1)]: Warden may dissolve user's committee in the following conditions:.....
[Article 14 (7)]: If an appeal is made under the Sub-Rule (6) and the decision of the dissolution of the users' committee by the warden is approved or if such an appeal is not made, the warden shall again form another users' committee and make it operated after the deadline for the appeal is over.
2. Buffer zone Guideline 1999 (2056)
[Article 25 (5)]: If any dispute arises regarding the selection of the executive members of the users' committee or Buffer Zone Management Committee, the dispute shall be settled by the Warden. If the decision of the Warden does not end the dispute, the disputing parties can appeal to the Director General within thirty-five days. The decision of the Director General shall be final.
3. Buffer Zone Management Rules 2052 (1996)
[Article 4 (1)]: For proper management of the buffer zones, the warden may divide such areas into various units.
4. Buffer Zone Management Rules 2052 (1996)
[Article 8 (4)]: The warden may form necessary users' committees in co-ordination with the local bodies to assist community development and balanced utilization of forest resources, and the conservation of the elements mentioned in the Rule-7 in the units divided under the Rule-4.
[Article 14 (4)]: On the basis of the report received after the field inspection under the Sub-rule (3), the warden if he deems necessary, may dissolve such users' committee.

Annex 6: Regulatory provisions around management plan

Management Plan
1. Buffer Zone Management Regulations 1996
[Article 5 (1)]: The warden shall prepare and submit buffer zone management work plan to the Department for community development, environmental conservation and the balanced utilization of forest resources of the buffer zones.
[Article 6 (1)]: The warden may put forward the management work plan to the Department with his opinion to make any amendments if he deems necessary.
[Article 13 (1)]: User's committee shall prepare the work plan for the works to be done for community development, natural resources conservation and utilization of forest resources within the buffer zone in its own area and get it approval by the users.
[Article 16 (1)]: Users' committee shall submit the work plan passed by the meeting of users under the Sub-Rule (1) to the

warden for approval.
[Article 13 (4)]: Auditing of each fiscal year of the users' committee shall be done by the person assigned by the concerned warden.
[Article 17.a]: Prohibited Activities within the Buffer Zone: Occupy any land without legal ownership or cut trees, clear forests or cultivate forestland,
2. Buffer zone Guideline 1999 (2056)
[Article 6 (1)]: While preparing the Buffer Zone Management Work Plan in accordance with Rule 5, the Warden should consider the work plans prepared by the committees of the units divided under Rule 4 as a basis.
[Article 7 (3)]: If the Warden feels it is necessary to discuss with the committees on the suggestions and recommendations collected in accordance with sub-section (2), he should call a meeting of Buffer Zone Management Committee and to notify the users' committees about the reasons and the importance for the revision. After discussing on the issues, written suggestions should be collected and the revised proposal incorporating the written suggestions should be submitted to the Department.
[Article 13 (4)]: Users' committee shall submit the work plan passed by the meeting of users under the Sub-rule (1) to the warden for approval.
[Article 15 (3)]: The users' committees of the units should submit the proposed programs to be conducted in their respective areas to the Warden for the annual program of that fiscal year within the month Jestha (May- June).

Annex 7: Comparative Regulatory provisions on tenure and locals access to resources of PA

Issues	Lowland PAs ¹⁹	Himalayan PAs	Khaptad National Park	CA	Buffer Zone
Access to forest products	Limited access only in thatched grass (<i>Khar Khada</i>), as prescribed by the warden	Allowed to local people for collection	Allowed to locals as prescribed by warden. Medicinal herb harvesting is restricted.	Allowed to local people for collection	Sustainable harvesting from community forests
Collective Forest Tenure	No provision			Conservation Community Forests for management and use of forest products in a sustainable way.	Certain area of buffer zone forests can be handed over to a concerned forest user group as per the tripartite

¹⁹ This includes both Chitwan and Bardia National Park Regulation as well as Wildlife Reserve Regulation

					agreement between the group, user committee and the PA authority
Grazing & stables	Restricted	Allowed to concerned communities (in stated located and period by warden)	Allowed to concerned communities. 4 months at high plateau grazing ground.	Define by Mgt. plan	As per the provision of buffer zone community forest
Timber	Not allowed to collect	Allowed to locals for to construct and renovate houses.	For construction and repair of houses for locals as per the existing rule on sale and trade of forest products. But restricted in sacred zone	Define by Mgt. plan	For consumption within the buffer zone. Provision of collection of drift woods in cooperation between park warden and user committees
Fishing	Fishing allowed against payment of fees. Concession for indigenous communities traditional engaged in fishing for livelihood in national park, but in wildlife reserve regulation it is permitted to all against payment of prescribed fees	Equal rights to all people	Equal rights to all but restricted in sacred (religious) zone.	Equal rights to all (for natives and non-natives) against payment of fees	Allowed, sometimes controlled by buffer zone community forests
Sands, boulders	As prescribed by the park warden as per the fees. To excavate/dig, remove, soil, stones/boulders, sand or any minerals are prohibited in permission sought from the government.			As per the management plan and fees for 'natural resources' as determined by the management committee for use within CA (article 25).	"Excavate stone, earth, sand or mine or remove any minerals, earth or other such materials" 17.c. is prohibited, local access to resources such as boulders are is not specified.

Annex 8: Regulatory provisions on tenure and locals access to resources of PA

1. National Park and Wildlife Conservation Act 1973
[Article 3 (2)]: His Majesty's Government may abandon or transfer the ownership or alter the boundaries of an area, which has once been declared as a national park, reserve or conservation area by publishing a notification in the Nepal Gazette.
[Article 5.d]: Prohibited actions within national park or reserve : To graze any domestic animal or bird, or feed water to it,
[Article 5.e]: Prohibited actions within national park or reserve : To cut, clear, fell, remove or block trees, plants, bushes or any other forest resources, or do anything to cause any forest resources dry, or set it on fire, or otherwise harm or damage it,
[Article 5.j]: Prohibited actions within national park or reserve: To block, divert any river or stream flowing through national park or reserve, or any other source of water, or use any harmful or explosive materials therein.
[Article 16.a]: Forest products and other services could be provided: The prescribed officer may provide prescribed forest products or other services by collecting prescribed fees inside a national park or reserve.
2. Buffer Zone Management Regulations 1996
[Article 21 (12)]: Users' will be allowed to transport forest products, except timber and firewood obtained under the Sub-Rule (10) and (11) from the buffer zone. Users will have to obtain permission from the warden before making such transportation.
[Article 23 (5)]: If an application is received under the Sub-Rule (4) and upon necessary examination, the forest products are found to belong to the owner of the buffer private forest, the warden may by insuring that there will no environmental impact, give permit to transport the products from the buffer zone by defining species, kind and quantity, and stamp seal in case of wood.
[Article 25 (4)]: If any users' committee of the buffer zone desires to take the forest products from the buffer zone, the warden shall have to sell by charging prescribed fees to such users' committee. If more than one user's committees desire to take such forest products, it shall be sold in a proportional basis.

Annex 9: Provision about Monitoring the Conservation Activities

1. Buffer Zone Management Regulations 1996
[Article 26 (1)]: The Ministry will prescribe the percentage of amount to be expended for the community development of local people from among the amount earned by the national parks, reserves or conservation areas under the Section-25a of the Act
[Article 27 (3)]: After examining the project proposal submitted under the Sub-Rule (1), the warden may approve to launch such project on the basis of appropriateness.
[Article 27 (7)]: After the submission of the final verification report with bills and vouchers, the warden make on the site inspection as and when needed and finds the work completed, he may clear the advance amount taken by the users' committee.
2. Buffer zone Guideline 1999 (2056)
[Article 21 (4)]: After the completion of the construction of projects with funds received for community development,

should be certified by the technician deputed by the Warden after necessary evaluation.
[Article 22 (2)]: To systematize the services to be operated in the buffer zone in accordance with Rule 33, the Warden may develop a code of conduct, get it approved from the ministry and put it into practice.
[Article 26]: In order to implement the objective programs mentioned in the Regulation and this Guideline in a practical, simple and clear cut manner, the Warden can prepare an Operation Guide, get it approved from the Department and implement it in his area.
3. Buffer Zone Management Rules 2052 (1996)
[Article 5 (6)]: Concerned Warden shall have the responsibility for the implementation of the management work plan approved under the Sub-rule (4).
[Article 16 (1)]: Auditing of each fiscal year of the users' committee shall be done by the person assigned by the concerned warden.
[Article 25 (3)]: Warden shall have to conserve, develop, and manage the forests within the buffer zone as prescribed under this Rule.

About Authors

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