

Rediscovering Indigenous Peoples' and Community Conserved Areas (ICCAs) in Nepal

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Foreword

As real human development and conservation retreat in the face of brutal forces pushing market-based solutions to the most remote corners of the globe, as climate change becomes entrenched, military might and repression spread, and financial power shamelessly perpetuates itself... many are indeed hard-pressed for islands of sanity. Those islands exist, and this booklet is about them.

Countless indigenous peoples and local communities, all over the world, are the stewards of some of the most precious biological and cultural diversity that still remain on our planet. Some still succeed in managing their land and natural resources with the same sophisticated collective care, knowledge and respect passed on by their ancestors. Others realized that only by equipping themselves with new capacities and skills can they defend their livelihoods and nature, and their identity with them. In general, they rely on institutions tailored to the context and skilled at adaptive management and flexible responses, which are crucial in times of stress, climatic or otherwise. But most of these people and communities still need some form of recognition, and they need support.

There is hardly a more important challenge, today, than discerning how to help them to preserve their nature, culture and deeper sense of common identity... and the authors of this volume have taken up the challenge with brilliance and gusto! They begin by recounting the movement that emerged to highlight and call for appropriate recognition and support to these “world bio-cultural jewels”, which have come to be known as ICCAs. The Convention on Biological Diversity and the International Union for the Conservation of Nature responded by embracing the concept and including it in their policies. And many governments,

from the North and the South, incorporate ICCAs in their national protected area systems and/or support them as part of their conservation strategies and plans.

Nepal is currently exploring, and possibly enlarging as we speak, the legal and policy spaces through which it can positively respond to ICCAs and incorporate them in the country’s conservation and human development outlook. This document describes a variety of ICCA examples in the country and outlines their results, their needs and some of the threats they face. It then lays the ground for an objective debate about their recognition and support at policy level and beyond, and clearly indicates some feasible and intelligent ways forward. Overall, the document is a milestone for all interested in understanding and improving the governance of natural resources in general, and of protected areas in particular, in the crucial juncture of contemporary Nepal.

Grazia Borrini-Feyerabend,

Preface

Indigenous and community conserved areas (ICCAs) have exploded into the consciousness of the global conservation movement in the last 5-6 years. Though the oldest forms of wildlife and biodiversity protection known to humanity, they have been neglected and even disprivileged in the last century or so of state-led, formal conservation policies and programmes. This has also meant that they have not gotten governmental or civil society support, against the many threats they face from external forces and the internal changes within communities that have been conserving them.

It is therefore more than welcome that there is renewed interest in ICCAs in an increasing number of countries. This both precedes (in fact forms the basis of) and follows from international recognition by institutions like the IUCN and agreements like the Convention on Biological Diversity. The IUCN Strategic Direction on Governance, Equity and Livelihoods in Relation to PAs (TILCEPA, www.tilcepa.org) has led this process in the early years of this millennium.

It is heartening that Nepal, too, has joined into this growing movement. This publication is very timely in that it provides a launching pad for what will hopefully be a rapidly increasing recognition of the extent and role of ICCAs in both conservation and in securing people's livelihoods. The authors provide a useful service in placing the country situation within the international context, describing a number of examples of ICCAs, and pointing to the various challenges that ICCAs face.

Nepal has in many ways been a leader in innovative conservation measures in South Asia. Collaborative governance initiatives such as the Annapurna Conservation Area; the handing over of the management of Kanchenjunga Conservation Area to the local

people, predominantly Sherpa, Limbu, Rai and Bhote indigenous peoples; policy and programmatic support to the widespread community forests; benefit-sharing from PAs to buffer zone communities; and other such initiatives are examples. These efforts have helped the slow shift away from an exclusionary, top-down and centralized form of conservation that our countries have blindly adopted from the West. Yet there is clearly a long way to go before a full paradigm shift can be claimed. The main challenges are fully recognizing ICCAs both within and outside government PAs, and involving communities in such PAs as equal partners in decision-making.

I and my colleagues in Kalpavriksh and TILCEPA have greatly benefited from being observers of Nepal's many innovative initiatives in conservation, starting from the documentation we were able to carry out over a decade ago (*Where Communities Care: Community Based Conservation in South Asia*, Kalpavriksh/IIED), and continuing with inputs we have provided to this current effort by the ForestAction, Nepal and other groups. This publication will undoubtedly be a major step towards providing indigenous peoples and local communities in Nepal with the recognition and support they need to continue, re-establish, or initiate practices for the responsible stewardship of nature.

Ashish Kothari, Kalpavriksh / TILCEPA, Pune, India

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Acronyms and abbreviations

ACA	: Annapurna Conservation Area
CA	: Conservation Area
CAMC	: Conservation Area Management Committee
CBD	: Convention on Biological Diversity
CBFM	: Community Based Forest Management
CFUG	: Community Forest User Group
CEESP	: IUCN Commission on Environment, Economic and Social Policy
DNPWC	: Department of National Parks and Wildlife Conservation
ICCA	: Indigenous and Community Conserved Areas
ILO	: International Labor Organization
IUCN	: International Union for Conservation of Nature
KCA	: Kanchenjunga Conservation Area
MCA	: Manaslu Conservation Area
NTNC	: National Trust for Nature Conservation
POWPA	: Program of Works on PAs
PA	: Protected Area
TILCEPA	: IUCN <i>Strategic Governance on Governance, Equity and Livelihood Rights</i> in relation to PAs
VDC	: Village Development Committee
WCC	: World Conservation Congress
WCMC	: World Conservation Monitoring Centre
WCPA	: IUCN World Commission on PAs
WPC	: World Parks Congress

1. Introduction

The notion of biodiversity conservation has been significantly revised and expanded in recent years. Traditional exclusionary models of Protected Areas (PAs) have also been questioned as diversity in conservation strategies is increasingly promoted. It is now internationally recognized that conservation also exists beyond the official (government) domain, and there has been increased attention in recent decades about the critical roles and contribution of local communities and indigenous peoples. Consequently there is increasing emphasis on local communities and indigenous peoples in the governance of PAs. With the paradigm shift in global discourse and understanding of PAs, local people are increasingly being recognized as critical actors in biodiversity conservation, in addition to state and conservation agencies.

Indigenous and Community Conserved Areas (ICCAs), an innovative type of governance of PAs, have gained significant space in contemporary conservation discourse as bold frontiers in conservation. They are the oldest forms of conservation—though there are newer forms and initiatives—and have often intertwined with local culture, identity, historicity, livelihood and way of life. But they are often unrecognized by the state, unaccounted for by official PA systems, and lacking in adequate support from government. However, because of their immense contribution to biodiversity conservation, debates around how best to recognize and support ICCAs are growing today.

This book aims to introduce the concept and understanding of ICCAs, and locate the practices and debates around ICCAs in the context of Nepal. The central goal of this book is to highlight the importance and potential of ICCAs in enhancing conservation

efforts of Nepal. It is expected to contribute in expanding and promoting the discourse on ICCAs. This work is an outcome of a year-long preliminary study in Nepal. But it is also informed by the authors' own experience of working with local communities and indigenous peoples in their conservation efforts, engaging in different national and international meetings, and participating in gatherings and forums on conservation over the past three years.

The book begins with a broad context and discourse of the changing paradigm of PAs globally, followed by a discussion of different types of governance for PAs (section 2). Against this backdrop, the emerging concept and special characteristics of ICCAs are introduced. The stark differences between ICCAs and governance of PAs by the government are underscored (section 3). A glimpse of key international events and tools relevant to ICCAs, which help trace an international discourse, is also presented (section 4). Entering into the context of Nepal, the relevant legal and policy context of ICCAs is discussed (section 5). Then it also portrays a snapshot of various examples and types of ICCAs across various parts of Nepal (section 6). Importantly, it also identifies some of the potential ICCA sites. It also highlights differences and resemblances of ICCAs with various forms of community based forest management regimes in Nepal. Finally, it builds on a discussion of relevance, need and ways ahead to recognize and support ICCAs in Nepal (section 7).

It is critical to understand how ICCAs can be properly valued, respected and supported in Nepal. In particular circumstances, this could involve government recognition and inclusion in the national PA system, or at least the provision of enabling legal and policy spaces. However, ICCAs must remain under the management and control of the relevant indigenous peoples and local communities together with their full access and management rights to land and resources.

2. Evolution of an inclusive paradigm of protected areas

The Convention on Biological Diversity (CBD) defines a protected area (PA) as "a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives" (Article 2). The International Union for Conservation of Nature and Natural Resources (IUCN) recently revised its definition of PAs as "A clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values" (Dudley 2008).

The conventional notions of PAs have often been driven by exclusionary logic, bio-centric conservation science and preservationist perspectives. However, the 'Yellowstone' paradigm of PAs has been largely discredited in international conservation discourses and policy processes in recent decades. Participatory, people-oriented and inclusive models and practices of conservation are gaining ground. This includes increased recognition of the role of non-state actors, particularly local and indigenous communities, as custodians of conservation. Recognition of this role at important international events such as the Fifth World Parks Congress (2003), the Third World Conservation Congress (2004), and Seventh Conference of Parties to the Convention on Biological Diversity (2004) were important hallmarks in the paradigm shift in international policy processes of conservation (Balasinorwala *et al.* 2004).

In fact, the narrow focus on government-declared and administered PAs has met with staunch criticism for alienating resource-dependent communities from their source of subsistence; eroding traditional livelihoods and cultures; weakening community contributions to conservation from cultural values and practices;

perpetrating involuntary displacements; exacerbating poverty among forest-dependent rural communities violating the human rights of indigenous peoples; and creating disproportionate costs of conservation. The negative impacts and costs of PAs have therefore been debated in conservation discourses time and again (Borrini-Feyerabend *et al.* 2004, Campese *et al.* 2007).

The understanding that PAs need to make a concrete contribution to poverty alleviation as well as realize the principle of "doing no harm" (Scherl *et al.* 2004) is gaining momentum. There has also been a growing realization that it is important to widen the myopic view of PAs and appreciate the diverse functions, benefits and immense values they can provide (Secretariat CBD 2008). The limits of the centralized approach, including its detrimental effects on institutional mechanisms at smaller scales, are also being noted. Therefore the need for new systems of PA governance and diversity in institutional approaches is imperative (McNeely 2009).

2.1 Governance of PAs

Governance issues in relation to PAs are increasingly gaining attention in conservation discourses today. However, the discourse of PA governance is still relatively dormant and it is less talked about than the 'management' of PAs in conservation language and domain. It is important to note that ***'governance' and 'management' of PAs are different in meaning and essence. While the management is a question of what we do, governance is a question of who decides, who has the authority, responsibility and accountability for the PA at stake*** (Borrini-Feyerabend *et al.* 2006) In other words, in the context of PAs, what we do for sites or situations is about management, while governance is about the decision-making process and arrangements for the distribution of costs and benefits.

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The governance of PAs thus concerns who holds the ‘the authority’ and ‘responsibilities’ of taking decisions on affairs such as: the establishment, designation and adoption of specific management approaches; determining who is entitled to have a say about PA management affairs; creation of zones for different levels of access and types of management practices; allocation of financial and other resources as well as generating revenue; the equitable sharing of the costs and benefits of conservation; and the sharing and delegation of power or decisions about important matters related to all of the above (IUCN/CEESP 2008a).

Different governance regimes for PAs have evolved as an important innovation along with discussions on globally accepted categories of PAs. Persistent work and innovation of TILCEPA (Strategic Direction on Governance, Equity and Livelihood Rights in relation to PAs) a joint theme of World Commission on PAs (WCPA) and the Commission on Environment, Economic and Social Policy (CEESP) of IUCN—has been influential in advancing and contributing to the discourse of PA governance. ‘Types’ of governance of natural resources are determined on the basis of ‘who holds the management authority and responsibility and who is expected to be held accountable according to legal, customary or other legitimate rights’. **Governance of both individual PAs and a diversity of governance regimes across the national system of PAs** is also gaining important space in discussions on PAs today.

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Table 1: IUCN management categories and governance matrix

Governance type	A. Governance by government			B. Shared governance			C. Private Governance			D. Governance by indigenous peoples and local communities
	Federal or national ministry or agency in charge	Local/ municipal ministry or agency in charge	Government-delegated management (e.g. to an NGO)	Trans-boundary management	Collaborative management (various forms of pluralist influence)	Joint management (pluralist management board)	Declared and run by individual land-owner	...by non-profit organisations (e.g. NGOs, universities, etc.)	...by for profit organisations (e.g. corporate land-owners)	Declared and run by Indigenous Peoples/ local communities
I - Strict Nature Reserve/ Wilderness Area										
II – National Park (ecosystem protection; protection of cultural values)										
III – Natural Monument										
IV – Habitat/ Species Management										
V – Protected Landscape/ Seascape										
VI – Managed Resource										

Source: IUCN/CEESP 2008b

Table 2: Classification of PAs of Nepal by governance type

Governance type → Categories of PAs ↓	Governance by government	Shared governance	Governance by indigenous and local communities
National Parks	<i>Sagarmatha, Shey Foksundo, Shivapuri, Rara, Bardiya, Chitwan, Makalu Barun, Khaptad, Langtang</i>		
Wildlife Reserve	<i>Suklaphanta, Koshi Toppu, Parsa</i>		
Hunting Reserve	<i>Dhorpatan</i>		
Conservation Area	<i>Blackbuck (Krisbnasar)</i>	<i>Annapurna, Manasalu</i>	<i>Kanchenjunga</i>
Buffer Zones¹		<i>Buffer zones in all the national parks and wildlife reserves.</i>	

The table above indicates a diversity of governance types of PAs² in Nepal. However, it also suggests that governance by government is the predominant form of PA governance in Nepal. Buffer zones, though managed by people’s institutions can also be considered a category VI PA with shared governance.

¹ Buffer zone is a separate category, though not counted as a separate PA in total number of PAs in Nepal i.e. category VI: *PA with sustainable use of natural resources*.

² The government has recently declared two new conservation areas in high altitude areas and one national park in lowland Nepal; however they are yet to be gazetted.

Governance types of PAs are different from the IUCN/WCPA management categories that are based on management objectives. IUCN protected area definitions and management categories are “neutral” about the types of ownership or management authority. The emerging paradigm appreciates that land, water and natural resources irrespective of any given management categories can be owned and/or directly managed by government authorities, NGOs, private actors, indigenous and local communities alone or in combination. IUCN recognizes and categorizes four governance types of PAs (as mentioned in the matrix above) based on who holds the ‘decision making, management authority and responsibility’ about PAs. These governance types—which include

- (A) ‘Governance by Government’;
- (B) “Shared Governance”;
- (C) ‘Private Governance’ and
- (D) ‘Governance by indigenous peoples and local communities’—can be associated with any management category (from category I-VI).

It is important to note that in large and complex PAs, particularly in categories V and VI, there can be multiple governance types existing within the boundaries of one PA. Hence, several governance types including areas governed by local people can co-exist within a single PA. **Thus, multiple governance types can exist within the boundaries of one PA!** This implies that a larger landscape/seascape can have a mosaic of governance types. Hence, state-designated PAs can appreciate multiple governance types including sites and zones conserved and governed by local people. Therefore, it is also important to note that a single PA, especially a large PA, can also have more than one IUCN management category (Dudley 2008). This understanding is

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important as it recognizes the existence of customary practices and institutions that are conserving sites with biodiversity significance within official PAs, in several instances having a much older history of existence than state declared PAs.

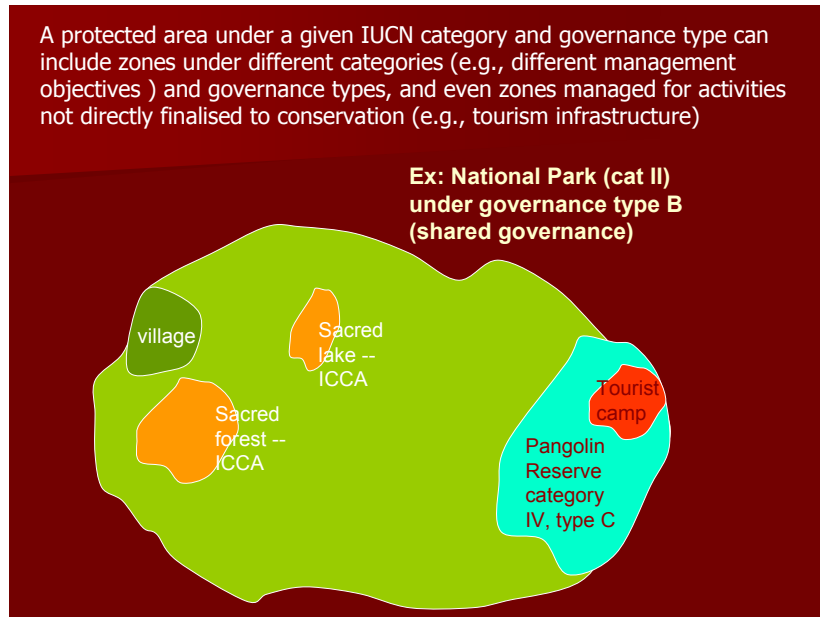


Figure 1: Multiple governance types in a PA (© Grazia Borrini-Feyerabend)

However, it is equally important to acknowledge that **‘no particular governance type is in principle superior to another. Under similar circumstances, different types may have different conservation outcomes’. Hence different governance types may have diverse conservation and equity outcomes.** Many countries around the world are moving beyond the conventional PAs with governance type A to other governance types (B, C and D).

Good governance of PAs is marked by key principles such as *‘Legitimacy and voice’*, *‘Subsidiary’* (managing authority and responsibility goes to the institutions closest to the resources at stake), *‘Fairness’*, *‘Do no harm’* (human rights of people), *‘Direction’* (long term perspective, vision, embracing complexities), *‘Performance’* (responsiveness, effectiveness and efficiency) and *‘Accountability’* (accountability of decision makers to public, transparency of information and decision making processes) (IUCN/CESSP 2008a). These principles, which are beyond the conventional and general notion of governance, can be important standards and indicators against which indigenous and community conserved areas are also judged. IUCN has also adopted resolutions that refer to good governance principles (WPC 2003, WCC 2004, WCC 2008). They are reflected in the CBD Program of Works on PAs.

3. Indigenous and Community Conserved Areas (ICCAs) as an emerging concept

The term ‘ICCA’ is relatively new in conservation discourses, though they are widespread and are the oldest form of conservation. ICCAs have been gaining widespread international recognition since 2003. Often it is also referred to as community conserved areas (CCAs), Indigenous PAs (IPAs), Indigenous Conservation Territories (ICTs) and Indigenous Peoples’ and Community Conserved Areas (IPCCAs). However, the term ICCA has become an inclusive term for a diverse range and types of areas conserved by local communities and indigenous peoples.

3.1 Definition and key features

IUCN defines ‘governance by indigenous peoples and local communities’ as “PAs where the management authority and responsibility rest with the indigenous peoples and/or local communities through various forms of customary or legal, formal or informal, institutions or rules” (Dudley 2008)

While the definition of Indigenous and Community Conserved Areas (ICCAs) is still evolving, in the literature on ICCAs it is commonly defined as “*natural and modified ecosystems with significant biodiversity, ecological and related cultural values, voluntarily conserved by indigenous peoples and local communities through customary laws or other effective means*” (Kothari 2006).

Three key features essential to ICCAs are (Pathak *et al.* 2004):

- Communities have a **relationship or concern** for relevant ecosystems and species;
- Communities are the major players in **decision making** and implementing management decisions through their institutions exercising authority and responsibility; and

- Efforts and management decisions of communities lead to and contribute towards **conservation**.

This criteria of having to achieve biodiversity conservation (conservation of species, habitats, ecological services and associated cultural values) rather than mere designation or management aim makes ICCAs even more demanding than the IUCN and CBD definition of PAs.

The ‘authority and responsibility rest with indigenous peoples and local communities through a variety of forms of customary governance or locally agreed organizations and rules’ (IUCN/CEESP 2008a). ICCAs are different from community-based biodiversity conservation initiatives. **Not all examples of community owned or controlled natural resources or community-based conservation or natural resource management practices are ICCAs.**

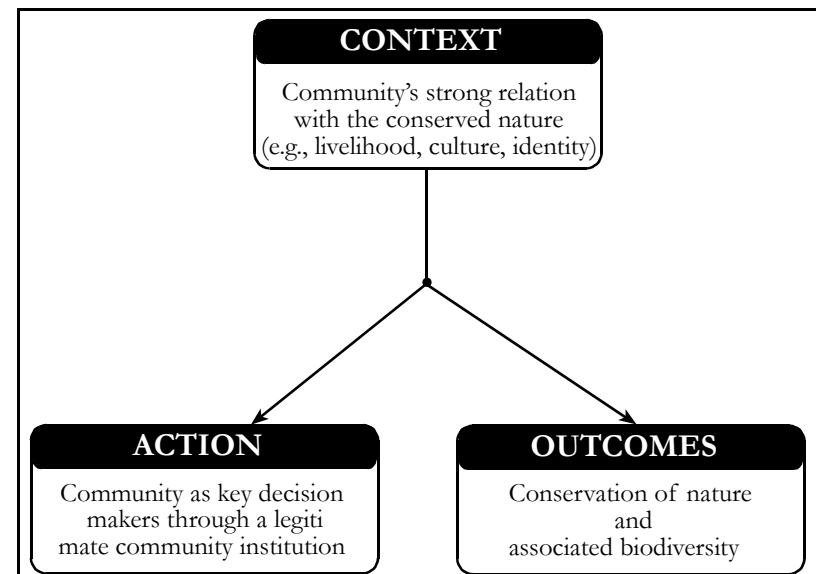


Figure 2: Three essential features and conditions of ICCAs

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ICCA is a governance types not a PA management category (See Table 1). **Also, one or more ICCAs can exist in a PA irrespective of who holds its overall authority. Therefore, ICCAs are complementary to existing official PA systems.** Table 3 outlines the difference between ICCAs and governance by government.

Table 3: Comparison between governance by government and ICCAs in Nepal

Governance by government	Governance by indigenous peoples, or/ and local communities
Government identifies and declares a particular site	Local communities/indigenous people identify, and decide to manage the area without any need for “approval” or specific declarations from the government
Government owns and manages either by its own administrative system (PA warden or conservation officer) or through other agency	The local community has <i>de facto</i> control over the land (not necessarily having a legal ownership), it controls and manages the area with its own governance arrangement
Government approves the Management Plan	The community develops its own rules, norms and management system. No government approval is required. This does not preclude that communities consult with government officials and other experts and receive their advice. The decisions, however, are taken by them.

The administration and management is backed by statutory law and related legal instruments	Management is guided through customary laws not necessarily through statutory law, and sometimes by a combination of both
The model has a recent origin and history (formally since 1872)	This is oldest form of conservation, although it may have evolved considerably through time; some ICCAs are also established through relatively new institutional arrangements.
The sites are managed under a complex and hierarchical bureaucratic structure	Relatively simple institution and minimum hierarchy in most cases.
The primary management objective is nature conservation	The primary management objective is not necessarily biodiversity conservation. Conservation may be achieved as a by-product

Source : Paudel & Jana 2009

4. International discourse on ICCAs

The table below briefly traces important international events and policy processes relevant to the defining the discourse of ICCAs. It also gives a snapshot of corresponding key outcomes and key discussions.

Table 4: International policy processes and tools significant to ICCAs

Events/ tools	Discussion
5 th World Park Congress, Durban, 2003	The largest gathering in the field of PAs held once every decade, crucial in shaping discourse of participatory conservation internationally and paradigm shifts in PAs. Milestone in recognition of local communities and indigenous peoples as true custodians of conservation other than states, highlighted need to recognize and support community conserved areas.
Convention on Diversity (CBD), 7 th conference of parties (COP 7), 2004	Extended Program of Works on PAs (POWPA) was adopted that further recognized and legitimized ICCAs.
1 st Congress of Marine PAs, Australia, 2005	Important regional process that was critical in shaping the agenda of good governance of marine PAs.
2 nd Latin American PAs Congress, Argentina, 2007	Important regional process that was critical in shaping the agenda of good governance of PAs.

IUCN World Conservation Congress, Barcelona, 2008	Echoed the importance of ICCAs and passed important resolutions on ‘Supporting Indigenous Conservation Territories and other Indigenous Peoples and Community Conserved Areas’ (RES4.049), ‘Rights-based Approaches to Conservation’ (RES4.056), ‘Implementing the UN Declaration on the Rights of Indigenous Peoples’ (RES4.052) etc. (WCC, 2008).
Convention on Biological Diversity, 1992	Preamble, Article 8j and 10c and POWPA
IUCN PA Categories and governance matrix	Provides important guidance for countries across the world on the diversity of governance types of PAs. It clearly locates ICCAs across various IUCN categories of PAs.
United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007	Article 26 pronounces the rights and control of indigenous peoples over natural resources ‘traditionally owned, used, controlled or occupied otherwise’. It also mentions that they have ‘the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. It obliges states to give legal recognition and protection to their lands, territories and resources.

International Covenant on Civil and Political Rights, 1976	Article 27 affirms the rights of peoples or “ethnic minorities” “in community with the other members of their group, to enjoy their own culture.” It has been applied by the UN Human Rights Committee to recognize Indigenous peoples’ collective livelihood practices and natural resource use.
International Labor Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples	Recognizes the traditional rights of access of indigenous peoples to land and the protection of these rights, as well as the right to natural resources that include the following specific rights ‘to participate in use, management and conservation of these resources’; provision of free prior and informed consent and participation of the people and ‘fair compensation’ for any ‘damages’ in case the state retains ownership of natural resources pertaining to land and exploitation of the same (Article 14 and 15). There are other articles which affirm rights that apply to ICCAs (Stevens 2009).
World Conservation Monitoring Centre (WCMC), under United Nations Environment Programme (UNEP)	WCMC is committed to supporting the recognition of ICCAs through the creation of participatory processes for the registration and global recognition of ICCAs. The process of filling up the form with basic information on ICCAs is based on the principle of free, informed and prior consent of the respective community.

4.1 Convention on Biological Diversity (CBD), 1992

The preamble recognizes ‘the close and traditional dependence of many indigenous and local communities’ adopting ‘traditional lifestyles on biological resources’, and the desirability of ‘sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and sustainable use’

Pertinent to ICCAs are two articles of the CBD (Article 8j and 10c)

Article 8 (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversityand encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;”

Article 10(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

CBD Program of Works on PAs (POWPA)

Program Element 2, Governance, Participation, Equity and Benefit Sharing of CBD, POWPA perhaps is one of the most important international agreements relevant to ICCAs³. POWPA recognizes indigenous and community conserved areas and stresses ensuring the full and effective participation of indigenous and local communities in the management of protected (co-

³ Refer to the following link for further details (<http://www.cdb.int/decision/cop>)

managed) areas. It also calls on parties to the CBD to: conduct national reviews of existing and potential forms of conservation, including innovative governance types; recognize and promote a range of governance types; review and revise policies; and consider different governance principles. However, thus far the implementation of element 2 has been weak globally, with a few exceptions.

The document of **COP 9 decision on PAs** (IX/18) states:

“Recognizing the need to promote full and effective participation of indigenous and local communities in the implementation of the POWPA at all levels; also noting the United Nations Declaration on the Rights of Indigenous Peoples,” and invites parties to:

- “a) Improve and, where necessary, diversify and strengthen protected-area governance types, leading to or in accordance with appropriate national legislation including recognizing and taking into account, where appropriate, indigenous, local and other community-based organizations;*
- (b) Recognize the contribution of, where appropriate, co-managed PAs, private PAs and indigenous and local community conserved areas within the national PA system through acknowledgement in national legislation or other effective means;*
- (d) 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, consistent with national law and applicable international obligations;”*

5. Legal and policy spaces for ICCAs in Nepal

5.1. Key international policy frameworks

As a party to CBD, the Government of Nepal, and particularly the Ministry of Forests and Soil Conservation (MoFSC) as a focal point, has obligations to comply with it. As mentioned earlier, two pertinent articles (8j and 10c) of the CBD are especially pertinent to ICCAs. Likewise, the CBD Program of Works on PAs (POWPA), which recognizes indigenous and community conserved areas, is relevant to respecting and promoting ICCAs in Nepal. Despite several innovations in participatory conservation modalities in the PA system of Nepal, implementation of the provisions of POWPA—especially its element 2 on governance, participation, equity and benefit sharing—remains challenging to developing countries, including Nepal.

In 2007 the government of Nepal ratified ILO Convention No. 169 on Indigenous and Tribal Peoples, becoming the first country in mainland Asia to do so. But there are several contradictions in the existing policies and acts concerning the management of natural resources and PAs. For example the current legislation on community forests as well as PAs is not sensitive to the rights of indigenous peoples. This demands huge changes in other sectoral policies of the country. There are not yet national laws supporting many of the articles of ILO 169, and PA regulations and management plans have not yet been revised to comply with the provision.

5.2 National legal and policy scenario for ICCAs

National legislation and policies in Nepal do not yet recognize Indigenous and Community Conserved Areas (ICCAs) as PAs even though Nepal is rich in ICCAs and they prevail in various forms, old and new. With the exception of the community-managed Kanchenjunga Conservation Area, legally designated PA under the category of ‘Conservation Area’, and the co-managed Annapurna Conservation Area (ACA) and Manasalu Conservation Area (MCA), all the PAs are managed by the government. However, religious forests (including those within conservation areas and buffer zones) and community forests conserving biodiversity do have legal recognition through other legislation and policies, even though they are not considered part of the PA system or area under conservation value. A review of relevant laws and policies pertinent to ICCAs suggests that a few critical spaces and opportunities do exist, but they all have limitations. The spaces and opportunities must be seized to advance recognition of ICCAs in Nepal (Please refer to illustrations in table 4)

Table 5: Glimpse of laws and policies relevant to ICCAs

Laws and policies	Description
Forest Act 1993 and Forest Regulation 1995	Community forests The Act (Article 43) recognizes the community forest user group (CFUGs) as a self-governing, independent, autonomous, perpetual and corporate institution. Entrusts CFUGs with management and use rights over forest resources on national forest handed over to local communities as community forest.

	Religious forests Article 35-37, of the act and rule 55-60 of the regulation have provisions of religious forest – ‘a national forest handed over to religious institution/body, group or communities for development, conservation of forest’. The legislation mandates such institution, group or community to be registered as per the existing law of the country.
Kanchenjunga Conservation Area (KCA) Management Regulation, 2005	Provides a legal framework for transfer of management and governance responsibilities of KCA to institutions of local people federated through an apex body called Conservation Area Management Council.
Conservation Area Management Regulation, 1996	Governs ACA and MCA, co-managed by NTNC and institutions of local communities. Formalizes VDC level conservation area management committee, constituted by representatives of local people. Rule 38-39 also has a provision of religious forests in Conservation Area.
National Park and Wildlife Conservation (NPWC) Act, IV Amendment	Accords space for ‘conservation areas’ as one of the categories of PAs. Among others, the fourth amendment addressed participatory conservation, added subsections on establishment of buffer zone as multiple-use zone with the formation of users committees. Made a provision to give 30-50 percent of the revenue generated from PAs to local people for community development.

<p>Buffer Zone management Regulation 1996 and Buffer Zone Guidelines, 1999</p>	<p>Provision of community-based three-tier model i.e. users group at household level, then user's committee at a village level federated into a (co-)management council at the level of buffer zone for each PA.</p> <p>Rule-22 has a provision for buffer zone religious forests - 'development, conservation and use' of religious sites and forest area in and around the site by religious institution, group or communities.</p>
<p>National Wetland Policy, 2003</p>	<p>Envisages several ways of managing wetland sites for effective conservation and management of wetlands, including '<i>community managed wetlands</i>'. One of the objectives of the policy is to <i>involve local people in the management</i> of Nepal's wetlands and to conserve biodiversity through wise use of wetland resources. Highlights participation of local people in wetlands management.</p>
<p>Nepal Biodiversity Strategy, 2002</p>	<p>Recognizes new models of ACA and KCA and encourages extension of this approach. Promotes knowledge of mountain peoples about biodiversity conservation, well being of people dependent on mountain resources, and community-based strategies for mountain biodiversity conservation. Local participation as a cross-sectoral strategy, 'indigenous knowledge systems and innovation' on biodiversity and benefits to local indigenous communities are some of the key aspects.</p>

All of the aforementioned policy and regulatory frameworks are oriented towards forging local participation and involving them in decision making. However, these policy and legal provisions help ensure that these grassroots institutions are ultimately accountable to state authorities. Despite all of the above, most indigenous and local communities' resource management practices and institutions are not legally recognized in the legislation inherited from the monarchic times.

Table 6: Comparisons of community-based forest management modalities with ideal recognition of ICCAs

Management modalities	Resemblance	Difference
<p>Community forests</p>	<p>Managed by locally formed institution and locals have active participation in decision making, planning, implementing and monitoring; ecosystems are protected and flow of diverse ecosystem services is maintained</p>	<p>Registered with state authority and rights legally recognized; Periodic approval/renewal required from the District Forest Office; biodiversity objectives may not be achieved since many CFUGs prioritize use.</p>
<p>Religious forests</p>	<p>Protected by local institutions that preserve spiritual and cultural values; protect important ecosystems and thereby maintain flow of important ecosystem services including biodiversity</p>	<p>Institution managing the forest is registered with state authority and requires formal approval; management responsibilities are legally recognized but harvesting is restricted</p>

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Conservation areas	Communities are directly involved; mosaic of common and private property; high biodiversity significance; may contain religious sites	Declared by government; management plans require approval from the state authorities; co-management by the central agency (currently NTNC); only legally recognized rights but not <i>de facto</i> rights.
Buffer zones	Community-based conservation; conservation of wetlands, forests, critical wildlife habitat, and other ecosystems; sustainable use zone; mosaic of commons and private property.	Government authorities have the key role and government approval required for the group legitimacy (i.e. formation of committees and the management plan); the group can enjoy only certain legally transferred privileges.
Collaborative forest management	Involvement of local communities in government directed forest management; Part of the benefits go to the local communities	Government forest authority has the dominant role; oriented towards use and less so for conservation, little value for biodiversity
Leasehold forest	Managed by local communities; conservation benefits solely goes to the communities; have rehabilitated degraded areas, enhanced ecosystem services	Require government approval, only small degraded areas, often separated from larger community in the neighbourhoods; limited to contract period

The above table gives a snapshot of the broad range of community-based forest management (CBFM) modalities recognized under the prevailing regulatory framework of Nepal. Interestingly, although many of the features unique to ICCAs can be found in various forms of CBFM, there are significant differences as well. Thus, not all of them can be generalized as ICCAs.

6. Scenario of ICCAs in Nepal

ICCAs exist extensively in different parts of Nepal despite an absence of an explicit legal recognition. They exist in old and new forms, and represent ecosystems of different types, scales and sizes. It is interesting to note that regardless of the government's recognition, let alone its support, there are hundreds of such sites where indigenous and local communities are governing the landscapes, forest patches, wetlands, sacred ponds and sacred sites through traditional norms, informal rules and values. Sacred groves; community governed forests under “*shinggi nawa*”, a community forest management system of indigenous peoples in Khumbu region; community managed rangelands and grazing spaces maintained as commons through customary practices of indigenous peoples and local communities (Upreti 2008, Stevens 2009); sacred sites with associated deep cultural and religious values significant to the conservation of biodiversity such as ‘*Beyuls* - sacred hidden valleys’ (Sherpa 2006) still exist in several higher altitude areas of Nepal. Traditional and customary practices of land use and resource management prevail, especially in areas inhabited by indigenous peoples rich in biodiversity.

State actions that favour centralized management of natural resources have largely hindered the continuity and growth of ICCAs in Nepal. For example, the nationalization of forests (in 1957), the nationalization of pasture land (in 1974), the superimposition of official PAs (beginning from early 70s), as well as the abolishment of traditional communal land management practices such as Kipat⁴ have jeopardized the maintenance of indigenous land management practices and common property

⁴ Persistent among indigenous peoples such as Limbu, Rai, Tamang, and Sherpas who also practiced Kipat until it was abolished

regimes in Nepal. Yet, there are customary ICCAs with de facto status predating the establishment of official PAs that still co-exist with the PAs and help maintain significant biodiversity. However, knowledge and understanding of these areas is limited.

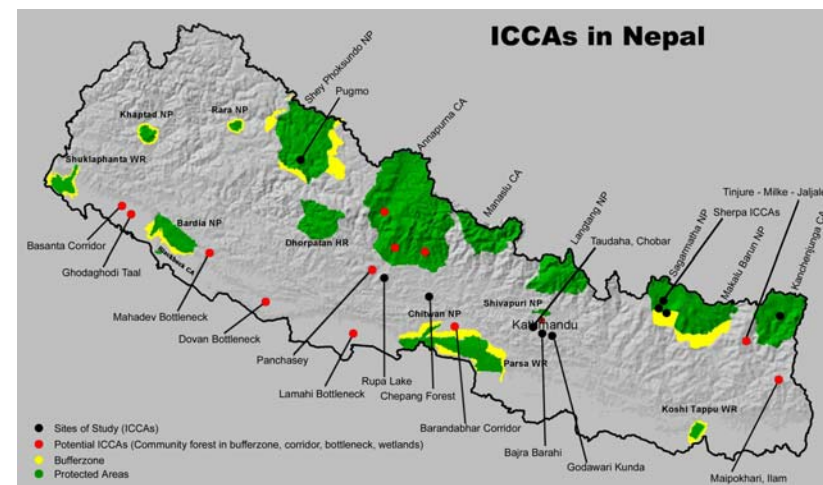


Figure 3 Existing and potential ICCAs in Nepal

6.1 Examples of existing ICCAs

The cases briefly described in this section represent various types and forms of existing and potential ICCAs in Nepal.

6.1.1 Kanchenjunga Conservation Area (KCA): Largest ICCA in Nepal

KCA with an area of 2035.41 sq. km is located in the eastern Himalaya of Nepal. It hosts third world's highest mountain, invaluable flora and fauna and rich biodiversity. The governance of KCA, which was earlier co-managed, was handed over by the government to Kanchenjunga Conservation Area Management Council (KCAMC) in 2006. The KCAMC is entrusted with an authority of management, use and conservation. It has given due recognition to several customary and *de facto* ICCAs in the region

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that preceded the setting up of the KCA by hundreds of years. For the very first time, people's institutions have been entrusted with the responsibility of managing a PA of such a large scale and importance. The CAMC includes representatives of Conservation Area Users Committees constituted at the level of VDC, and user groups and mother groups at a settlement and household level. The KCA Management Regulation, approved in 2008, established a management council of local people that does not include the warden of KCA. While the Department of National Parks and Wildlife Conservation (DNPWC) plays the role of a technical advisor, WWF Nepal is providing technical support to the CAMC. There is a withdrawal plan of external assistance within a 3 to 4 year period. However, the management plan formulated by the people's institutions at various levels has to be approved by the DNPWC.

6.1.2 Customary pasture management in Pungmo, Lower Dolpo

Evidence from past studies suggest the existence of customary ICCAs in lower Dolpo, in the mountains of mid-western Nepal, in the form of indigenous practices of pasture management, and the ecological and cultural relation of Pungmo people to the landscape where transhumance is practiced. Pungmo, one of the two major settlements in Phoksundo village, located in the upper part of Lower Dolpo has around 159 inhabitants. Landscapes managed for the purpose of grazing and mobile settlements have also been documented as sacred sites, valuable for biodiversity conservation and maintaining watersheds, as well as for sustaining traditional local livelihoods.

Indigenous peoples of Pungmo have traditionally demarcated their territories for resource use and management. They have identified various land-use units or ecosystems in the form of forests, pasture, rocky mountains and snow mountains, with further subdivisions of these units based on physical nature, cultural values

and ecology. Pastures have also been sub-divided into various zones and units based on the nature of resource use and utilization, such as rotational grazing and pasture harvest (Aumeeruddy-Thomas *et.al.* 2004; Ghimire and Parajuli 2001).

6.1.3 Forest conservation in a landscape: Chepang commons

103 households of Chepang - one of the highly marginalized indigenous peoples of Nepal- have been managing forest landscape as commons in the village of Hapani-7, Kauley, Chitwan, in the central mid-hills of Nepal. The 300-hectare forest landscape stretches over six hills. There are forest patches within the landscape that are considered sacred and some portions of the forest are restricted from use. For example the 'Hapani' hill, where Chepangs perform rituals in a small temple made of sacred stones, is considered sacred. Only fallen wood is collected in the area while the chopping of trees is prohibited. There is a common belief associated with the 'Syaulochuli' hill forest, where Ban Jhankri (forest shaman) would harm and bring misfortunes to those who access forest products from the hill.

Chepang youth have been instrumental in forest conservation, as they recognized the increasing threats from unregulated slash-and-burn cultivation constrained by sedentary lifestyles in a limited landscape, as well as hunting from non-locals, and their dependence on forest resources at risk. The forest is now being conserved as Akala Devi Community Forest with an informal forest management committee that mostly consists of local Chepang youth. Informal rules concerning access of forest resources are in place. Grazing; harvesting of medicinal herbs and wild fruits; wild yam, leaves and fallen dried woods are available for all the locals in the village. Seasonal harvesting of Katus (*Castanopsis indica*) seeds sold in the local markets is also free to all the locals. Felling of trees without prior permission of the local forest management committee or mutual understanding of the villagers is restricted. Locals can access timber for the construction

of a house with prior information to the ad hoc committee for locals. The slash-and-burn cultivation practice has also been controlled to conserve forest cover.



Photo 1: Hill forest conserved by local Chepangs, on the left, Chepang households and agricultural land across the river

6.1.4 Rupa Lake: Initiative by local fisheries cooperative

The 115 hectare⁵ wetland is situated in Rupakot VDC-6, of Kaski district, central Nepal. It has been conserved by locals and managed by Rupa Lake Restoration and Fisheries Cooperative (RLRFC), formed in 2001, which now has 700 locals as shareholders. Traditional fisher-folks and poor households have benefitted either as shareholders or as staff of the cooperative. The lake is a habitat for several endangered and threatened species, such as white lotus, wild rice, *Narkat* (*Saccharum fuscum* Roxb.), Otter and several species of water ducks. The lake harbors 1 endangered mammal, 4 types of threatened plants, 40 fish species, 33 types of birds and 4 species of amphibians.

⁵ The study by Tek Bahadur Gurung, Nepal Agricultural Research Council however suggests 100 ha as the area of the lake and a catchment area of 30 sq. km.

In the past, the lake was highly threatened by the expansion of aquatic weeds, encroachment by private landowners surrounding the lake and the high rate of sedimentation. The presence of migratory birds and the number of aquatic species also decreased. These threatening conditions, as well as economic incentives through fisheries management, motivated locals to take charge of wetland conservation. Technical assistance was sought from the government as well as NGOs. Locals have been engaged in weed removal, introducing fish to control excessive aquatic weeds in the lake; installation of a mesh net across the outlet of the lake to control



Photo2: Rupa Wetland and surrounding landscapes conserved as community forests (© Ashish Kothari)

its stocked fish; and conservation of wild paddy. Grassland and wetlands at the southern periphery beyond the core area of the lake provide important bird habitat and are conserved by restricting fishing in the area, and by halting the harvesting of birds during the breeding season. The cooperative is supportive of 17 Community Forest User Groups (CFUGs) surrounding the lake, including ones in the catchment area. The cooperation between

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the local wetland management institution and CFUGs in the watershed area has prospects for integrated landscape level conservation, which combines a wetland ecosystem with a forest ecosystem.

6.1.5 A Sacred Wetland in Kathmandu Valley: Tau Daha

Tau Daha (lake), a natural sacred lake has a deep cultural significance. The 5 hectare lake is situated to the south-west of Kathmandu valley (approximately 6 km away from Kathmandu) in ward 5 number ward of Kirtipur municipality. As per the popular legend, the holy lake is the home of the King and Queen serpents and is believed to have a connection with nearby historical and cultural sites at Chobar⁶. Stories and myths that underscore the value of the lake and prevent people from disturbing or harming the lake are common among the locals.

The wetland ecosystem is a home of some 118 species of birds representing 28 different families including migratory birds from the Northern Himalayas. Likewise, the lake harbors 39 species of aquatic plants and is rich in aquatic fauna. The lake also contributes to recharging the groundwater of the Bagmati watershed, the biggest river of Kathmandu valley. Fishing, boating, hunting and other disruptive activities are strictly prohibited because of the cultural and religious significance of the lake. Because of its aesthetic beauty, it attracts a significant number of domestic tourists and bird watchers during winter. The lake is being managed by the *Karkotak Nagraj Nagrani Bashsthan Tau Daha Samaj*, a local people's institution. Local youth were also active in conservation initiatives in the past.

⁶ Chobar is a historical site where lord Manjushree made an outlet for a lake covering entire Kathmandu valley, by chopping part of a hill. Serpents then began to take a refuge in the two sacred lakes formed thereafter in the valley, one being Tau Daha and another being Nag Daha in nearby Lalitpur district.



Photo 3: Habitat of migratory birds in the middle of sacred Tau Daha (© Tasneem Balasinorwala)

6.1.6 Godavari Kunda Community Forest: Critical bird habitat

The community forest with an area of 147 ha is located at Godavari, 10 kilometers, southeast of Patan in the Kathmandu valley. The CFUG, formed in 1996/97 now has 540 users from 108 households. Only around 25 households depend on and access forest resources for household consumption. The forest cover is being conserved by dividing the forest area into four blocks. Members of CFUGs are involved in regular cleaning, and removal of weeds and unwanted plant species in the forest. Two forest guards have been employed by the CFUG to patrol and regularly monitor the forest area. There are picnic spots, resting areas as well as bird conservation areas. The forest area is open to visitors through prior permission.

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The community forest has significant biodiversity value with different plant species, around 300 species of birds, 512 Angiosperms and 259 species of butterfly, more than 50 species of medicinal herbs have been recorded. “It is also a good habitat for approximately 200 Reddish Deer (*Cervus elaphus*), 200 Porcupines, 50 Wild Cats, 400 Kalij and few numbers of wild boars” is written on the signboard of the CFUG. The CFUG members have been discussing the possibility of cooperating with 3 other nearby CFUGs to conserve forest biodiversity in a much larger landscape. More importantly, the idea of connectivity between CFUGs at a landscape level arises from the motivation and intention to develop a tourist trail across the CFUGs and draw economic incentives along with forest conservation



Photo 4: Local women of Godavari Kunda community forest (Courtesy: Tasneem Balasinorwala)

6.1.7 Bajra Barahi Sacred Forest in Kathmandu Valley

Bajra Barahi one of the most ancient religious forests of Nepal is located 3 km to the east of Chapagoan⁷, a village predominantly inhabited by the Newari ethnic group, in Lalitpur district in the Kathmandu Valley. The sacred forest contains a 15th century temple of Bajra Barahi⁸ and is now a popular site for devotees and picnickers. The temple hosts a popular religious festival and rituals during the full moon in the month of April. A common feeling among locals is expressed in the following quote: “We won’t even pluck a leaf from this forest. If we do so then it brings misfortune and trouble in the family”. While the forest is open to visitors and picnickers for recreational purposes, the collection of forest products is strictly prohibited in the forest.

The 18.29-hectare forest dominated by Katush (*Castanopsis indica*) trees, hosts 160 plant and tree species and 48 bird species. The Spiny babbler and Sun bird, which are unique to Nepal, are also found in the forest. The forest is being managed by Jyoti Daya Sang (Association), community-based organization of Newari locals from Chapagoan village. Management of the forest was transferred from the District Forest Office to the local organization in the year 1996/97. Local youth were instrumental in conserving the forest, which was once unregulated and threatened by open access.

6.1.8 ICCAs in Khumbu region

The Khumbu region is the ancestral homeland of Sherpa indigenous people, part of which was designated as Sagarmatha National Park (SNP) and a World Heritage Site in the 1970s. Sherpa leaders conceived of the region as ICCAs comprising commons, sacred sites (river, lakes, mountains, forests,

⁷ About 10 km south of Patan in the Kathmandu Valley.

⁸ One of the manifestations of Ajima, or mother goddess, the boar-headed deity is worshipped as the protector of livestock.

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monasteries, spiritual places) and their settlements. The region extends over 1500 sq. km comprising high mountains and valleys stretching up to the highest mountain on earth, Chomolongma or Sagarmatha (Mt. Everest) at 8848m. It has more than fifty permanent settlements and more than 120 seasonal and temporary settlements for grazing and agricultural purposes. The Sherpa indigenous people have been maintaining several kinds of ICCAs, both old and new, for many generations.

There are community forests in which regulations are enforced by “shinggi nawa”.⁹ Community and multi-community land management systems, including rotational zone grazing systems and rotational zone grass cutting systems, which are maintained through village assembly decisions and customary law and are enforced by “nawa”. Traditional rotational grazing, grass, livestock & agricultural land management is locally known as the ‘*Lothok Nawa*’ system. Likewise, sacred forests are also conserved. The Khumbu region is considered sacred and is known as the Khumbu

⁹ According to Stan Stevens (personal communication) “The “shinggi nawa” system is an indigenous peoples’ community forest management system under which village assemblies governed village forests through customary law and decisions reached at annual assemblies. The shinggi nawa are villagers chosen to enforce village law. This was formerly the practice in some but not all villages within Sagarmatha National Park (in other villages there were not special shinggi nawa, but community forest management was enforced by nawa who enforced grazing and other regulations as well). The nawa system has traditionally been different from the “shinggi nawa” system in most Khumbu villages (Stevens 1993). In some cases, however, the same individuals fulfill both nawa and shinggi nawa responsibilities. The nawa are unpaid village officials who enforce Sherpa village customary law and village assembly decisions. They help oversee the operation of a zonal system in which particular zones are closed and then opened at different times to specific activities associated with farming, grazing, grass cutting (and in some villages also forest use).

In the early 1980s a region-wide shinggi nawa system was established at the initiative of SNP wardens Mingma Norbu Sherpa and Lhakpa Norbu Sherpa under which each village chooses shinggi nawa who are given authority by SNP to enforce SNP forest regulations, including levying fines (Stevens 1997; Stevens and Sherpa 1993). Khumbu villages today use shinggi nawa to enforce village assembly decisions and customary law as well as SNP regulations and decisions of Sherpa SNP Buffer Zone institutions.”

beyul¹⁰ (where all wildlife is protected through Sherpas’ Buddhist values and respect for the sacred valley). The Khumbu beyul is larger than the area of SNP, and includes the buffer zone area to the south. There is evidence of pre-existing ICCAs of the Sherpa before designation of SNP and establishment of the buffer zone (Stevens 2009, Stevens 2008).



Photo 5: Eastern Khumbu region, Mt. Everest (Sherpa sacred mountain Chomolungma) at the upper left and SNP buffer zone village of Khumjung, and its sacred temple forest, community forest and community grassland in the centre and foreground (© Stan Stevens)

Recent attempts by Sherpa community leaders to get ICCAs in the region of Mount Everest recognized by the state and their pledge towards safeguarding Sherpa cultural practices of conservation were met with opposition and mistrust from the government and conservation agencies. Instead of capturing the real intention and ethos behind the initiative, the print media created further controversy and confusions among conservation stakeholders. The

¹⁰ **Beyuls** are hidden valleys blessed by Guru Rinpoche (Padmashambhava) as a refuge for his followers at times of great crisis. All life within a Beyul is considered sacred and protected. Inhabitants are expected to avoid ill acts such as quarrelling, violence, killing, destruction of nature and natural environment, in Beyul.

Sherpa leaders in their recent appeal to the prime minister, in 2009, also declared the Khumbu area with renewed conservation policy as a 'Community Conserved Area' as per their culture, traditions and way of life.



Photo 6: Forest strictly protected by local Sherpas

Locals conserving endangered Red Panda

Despite the absence of government, the Choyatar Community Forest User Group in Jamuna VDC of Ilam District in eastern Nepal is proactively engaged in conserving the endangered red panda in 275 ha of community forest. As prospects for eco-tourism began to grow with the arrivals of tourists to see red panda in the community forest, locals have intensified their role in conservation of this rare wild species. The CFUG now charges fees for sightseeing and claims to invest the generated revenue for conservation. With growing conservation consciousness among locals, free movement inside the forest has also been restricted. The role of local women is central to ongoing conservation initiatives¹¹.

¹¹ Based on personal conversation with Devika Gurung, president of the CFUG, Feb, 2010.

6.2 Potential ICCAs in Nepal

There are several sites across the country where local people are conserving ecosystems and sites of biodiversity significance but may not be conceived as ICCAs as per its basic criteria. However, these sites have immense potential to be enhanced and advanced as ICCAs given adequate support, legal and policy spaces. These can be classified as follows:

6.2.1 Buffer Zones and Community Forests:

Existing buffer zone areas in various PAs of Nepal can be promoted as ICCAs with full autonomy to people's institution for conservation and sustainable use of natural resources. Successful examples of local peoples' initiatives in restoring and maintaining forest biodiversity under the banner of buffer zone community forests are significant for wildlife too. They could be other potential forms of ICCAs around the PAs. The example of Bagmara buffer zone community forest in the Chitwan National Park Buffer Zone is often cited as a good example of community based eco-tourism (Kothari *et.al.* 2000).

6.2.2. Community forests in corridors and bottlenecks:

Many existing community forests and local people's initiatives to conserve the forest cover critical for wildlife movement as well as connectivity of islands of PAs can be respected and promoted as ICCAs. Contribution of hundreds of CFUGs in forest conservation and restoration have been widely acknowledged in corridors and bottle necks of Terai Arc Landscape (*Basanta corridor, Katarnia corridor, Lamahi bottlenecks, Mahadevpuri bottlenecks, Dovan bottlenecks*), as well as the Barandabhar corridor in the lowlands.

Yet not all community forests can be considered as ICCAs. There are many community forests across the country that are achieving biodiversity conservation objectives, conserving wildlife habitat, important watersheds and maintaining ecological services. These community forests definitely qualify to be ICCAs. Likewise, many

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nearby community forests and their inter-connectedness at the landscape level can enhance its ecological scale. These networks of community forests, with some form of institutional coordination or with shared regional institutions can also be promoted as ICCAs of different scale.

6.2.3 Conservation Areas:

Following the innovative example of the Kanchenjunga Conservation Area, current co-managed conservation areas in Nepal can also evolve into ICCAs. Village-level governance and conservation initiatives by institutions of local communities and indigenous peoples within these existing conservation areas can also be promoted as ICCAs. Planning is underway to hand over management and governance responsibilities of Annapurna Conservation Area by 2014.



Photo 6: Members of Dibya Buffer Zone Community Forest during biodiversity monitoring of wetland, Nawalparasi. © Naya Sharma

6.2.4 Community Wetlands:

Several wetlands where local people's stake and participation in conservation is high can be potential ICCAs with wetland ecosystems. Popular Ramsar listed wetlands such as Mai Pokhari in Ilam, Ghodaghodi Lake in Kailali, where local people at the vicinity and their institutions have prospects to govern these areas given some technical and facilitating inputs from relevant agencies and state actors. Likewise, other Ramsar listed wetlands, such as Beeshajari Lake, currently managed by Mrigakunja buffer zone community forest in the Chitwan National Park Buffer Zone, could be another good example of achieving an ICCA with few regulatory reforms.

6.2.5 Panchasey Hill and forest cover: ICCA in making



Photo 7: Panchasey hill tract, junction of Parwat, Syanja and Kaski district on the left, mount Annapurna on the background.© Sudeep Jana

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Panchasey hill and adjoining forests currently conserved by locals cover an area of 8000 hectares. It is located at the connection of the three districts (Syanja, Kaski and Parvat) in the mid-western hills, amidst 17 adjoining VDCs. Around 100,000 people, with the Gurung indigenous peoples in the majority, are estimated to be dependent on the resources of the area. The site has historical and cultural significance in addition to its biodiversity value. It constitutes sacred sites, pilgrimage and old 'gombas' (sacred place for Buddhists) including a sacred pond in the area.

The area is known to have 107 species of orchids, several varieties of Rhododendron, and diverse species of medicinal herbs. Hare, porcupine, deer and hundreds of bird species have also been spotted in the area. The landscape also serves as an important watershed, the source of various rivers that feed the famous Phewa Lake in Pokhara. The place has the highest rainfall in Nepal. It is also gaining popularity among tourists because of a panoramic view of several mountains and peaks (Machapuchhre, Annapurna, and Dhaulagiri) from a single location.

For the past two decades, locals as well as a local NGO called the Machapuchhre Development Organization (MDO) have been involved in conservation. Religious and cultural affairs in the area have been managed by Nepal Pancha Dham Panchasey Committee, set up by locals. Likewise, Panchasey Area Development User Committee, a regional level body of local people's institution, that was constituted with the support of District Development Committee, MDO as well as the committee managing religious affairs, is currently taking charge of management and conservation. The user committee has been engaged in tireless effort to gain legitimacy for the committee, to garner more support and develop the area as a community-managed conservation area.

6.2.6 Tinjure-Milke-Jaljaley (TMJ): Proposed Conservation Area (CA)

500 sq km TMJ, proposed CA is located between two existing PAs of Nepal (Makalu Barun National Park to the west and Kanchenjunga Conservation Area to the east). The proposed area tentatively constitutes 23 VDCs with approximate local population of 50,000. The scenic beauty and endemism of diversity of Rhododendron species are special features of the area. As per the proposal of the Ministry of Population and Environment, on July 13, 1998, the council of ministers declared a 9,003 hectare area as a National Rhododendron Conservation Area¹², yet to be designated as a PA.

A working group¹³ was constituted on March 13, 2007 from the state ministerial level directive to conserve biodiversity, cultural diversity and religious sites, and create a mechanism for livelihood security of local communities in the TMJ area. The working group report suggests revoking the earlier decision as an environmental conservation zone (as it jeopardizes the rights of local communities under the provisions of the act) and declaring the area as the TMJ Rhododendron CA to be managed by local communities, and to formulate necessary regulation. The proposition of TMJ area as a CA uses the language of 'rights and effective participation of local people in the governance of the area'.

¹² The legal basis for this decision was the Environment Protection Act, 1997, Article 10 and Environment Project Regulation, 1997, Rule 30.

¹³ Actors involved in the working group were the Ministry of Forests and Soil Conservation, IUCN Nepal, The Mountain Institute, National Trust for Nature Conservation, WWF Nepal, National Rhododendron Conservation Management Committee and ICIMOD, as well as some of the invited member of parliaments from Terathum and Sankhuwasabha districts. *Source: Report of the working group constituted to promote TMJ Conservation Area, March/April 2007*

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However incidents of local tension and resistance, especially from the community forest users groups, also raise concerns about the autonomy of existing community forests within the proposed CA. In the same manner a lack of adequate dialogues with local people, regional ethnic based political groups, civil society groups, and influential conservation actors and agencies, has been a serious setback to this process. The proposed CA could very well be developed as an exemplary case of ICCAs in Nepal, given the fact that customary and other forms of ICCAs including community forests existing in the area are well recognized and integrated in any proposed democratic and inclusive community-based management modality. The working group report also envisages community-based people-centered structure.

7. Debates and way forward

7.1 Significance of ICCAs and associated benefits

Glimpses of various types of ICCAs in Nepal presented in the earlier section unfold their immense contribution and relevance to biodiversity conservation in various degrees and scales (see examples of existing ICCAs in section 6). However, they are not limited to biodiversity conservation, but offer multiple benefits. Although ICCAs are not superior to other governance types of PAs, they are one of the most suitable and effective governance arrangements to address the multiple objectives of resource management, because of their diverse benefits and functions.

Ecosystem services¹⁴

ICCAs maintain essential ecological functions and provide various ecosystem services by conserving diverse ecosystems (forest, wetland, terrestrial etc).

Many of the existing ICCAs provide corridors and linkages for species between existing PAs, and therefore provide extended habitat for wildlife outside of official PAs. Hence, their role is critical in ensuring the connectivity of PAs and fulfilling some of the ecological gaps. Through proper recognition and support to ICCAs ecological gaps can be addressed without further expansion or formation of new and costly PAs.

With an upsurge of discourse and concern about climate change globally, including in Nepal, ICCAs are a convenient approach to tackle this inconvenient truth of an impending global climate crisis.

¹⁴ Ecosystem services are benefits we derive from ecosystems. They include provisioning of services (food, water, timber, fibre, fuel); regulating services (climate, flood, disease regulation, water purification); cultural services (recreational, spiritual and aesthetic) and supporting services (soil formation, photosynthesis, nutrient cycle) (MEA 2005).

ICCAs, with their contribution to biodiversity conservation and maintaining ecosystem services, are one of the crucial, effective and just strategies for community-based mitigation and adaptation to climate change.

Socio-economic and cultural benefits

ICCAs also provide multiple benefits in terms of sustaining local livelihoods (e.g., Chepang forest commons, Rupa wetlands) cultures and traditions linked with conservation (e.g., ICCAs in Khumbu). Along with the maintenance of traditional livelihoods, they also offer newer opportunities to enhance local livelihoods through the sustainable use of natural resources and the potential for eco-tourism (e.g., Rupa wetland, Tau Daha, Choyatar and Godavari Kunda CFUGs). It is equally critical to maintain social cohesion, values of values cooperation and fostering collective action.

Often biodiversity conservation is not the chief motivation for communities to manage the relevant areas. Other, more important motivations might include maintaining their livelihoods (e.g. forest commons of Chepangs) or maintaining specific cultural, aesthetic and religious values (e.g. Bajra Barahi scared forest, ICCAs in Khumbu region, Panchasey hill tracts). What is by definition important for all ICCAs is that they generate conservation outcomes.

One of the unique aspects of ICCAs is that conservation is taking place there at relatively low financial costs, because of the significant amount of non-monetary voluntary contributions from local communities, for example in the cases of ICCAs mentioned in the earlier sections. There is always a comparative advantage of local people over official PAs in terms of administrative and management costs.

Strategic benefits

In addition to ensuring conservation, ICCAs maintain local ecological knowledge systems, practices and innovations by respecting local and indigenous institutions critical to local governance of biodiversity and natural resources. They also provide important lessons for participatory governance of PAs.

At a time when the expansion or formation of new PAs is often faced with local resistance and political challenges, ICCAs offers viable solutions to expand the current coverage of PAs by addressing rights, concerns and contesting claims of local people. In fact, ICCA is increasingly being viewed as one of the effective strategy to actualize a ‘rights-based approach to conservation’ (Stevens 2009)¹⁵. Therefore, they are useful to address some of the conflicts between local people and PAs.

Even though many ICCAs exist outside the purview of the existing PA system, many of them co-exist within current PAs, for examples de facto ICCAs in high mountain PAs, which are generally not recognized. As government has recently declared two new conservation areas, and a new national park¹⁶, the expansion of PA regimes is being contested by local people, particularly by community forest user groups and a few civil society groups. The concept of ICCA could be very useful to redress local concerns, duly acknowledging and integrating existing customary de facto and other forms of ICCAs at a landscape level.

ICCAs help in eradicating poverty and ensuring environmental sustainability, thereby meeting Millennium Development Goals (MDGs) (Pathak *et al.* 2004). This is one of the critical challenges that many developing countries including Nepal are currently grappling with. The potential of many ICCA sites has immense significance to link with eco-tourism. However there has been no thought to incorporate Biodiversity 2010 Targets in the MDGs (MoFSC 2009).

¹⁵ Refer to Jessica Campese, ed. *Issues and Opportunities for Rights Based Approaches to Conservation*. Bogor, Indonesia: CIFOR, for further details on the concept and practices around the world.

¹⁶ Api Nampa Conservation Area in far western Nepal and Ghaurisankar in central Nepal at higher altitudes ; and Banke National Park in the lowlands.

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ICCAs are well recognised governance types of PAs (associated with any management objective) by the international policies and programs, especially under the CBD. ICCAs are one of the important arenas to comply with provisions of the CBD, the Program of Work on PAs in particular, ILO 169, and UNDRIP, and therefore enhance conservation initiatives under the internal policy guidance and framework.

7.2 Why should Nepal “recognize” and support its ICCAs? What additional values can it expect from it?

Despite illustrations of significance of ICCAs in the above section, it is imperative to discuss some of the key arguments about ICCAs. It is important to note that the recognition and support to ICCAs helps to advance the three-fold objectives of conservation, local livelihoods and human rights in Nepal.

Local people are conserving biodiversity. Therefore, they need to be recognized and respected for their contributions. The issue of justice and fairness: those who are conserving should be rewarded with just benefits. This is inherent in a rights-based approach to conservation.

As mentioned earlier, there are hundreds of sites outside of PAs that would qualify as ICCAs. But they have little or no legal backing or recognition as sites of conservation (even if many of them have recognition as community forests or religious forests, but they are not considered sites of conservation significance). This is important in the long run for various reasons, including buffering them against destructive processes, channelizing conservation funds to them, building them into landscape mosaic conservation strategies etc.

Many current and potential ICCAs are vulnerable to internal and external threats (such as cultural change, cultural erosion among youths, destructive development practices, natural factors such as sedimentation and invasive species among others). If they are not identified, or continued to be ignored, many ICCAs may risk losing their integrity and sustainability, resulting in significant loss of biodiversity and remaining in a state of jeopardy in a long run.

Recognition is also needed to secure the stake of local people in the sites they are conserving; providing a sense of security fosters a sense of ownership to capitalize, garner and sustain the commitment of communities for conservation.

Areas within existing PAs, such as Khumbu, are eminently qualified to be recognized as ICCAs. The additional value here being the much greater stake it would give to local communities to not only continue but renew (or in some cases start afresh) their conservation efforts. This does not undermine the PA status of such areas (as is often misunderstood) but rather complements and strengthens it. It opens avenues for institutional arrangements to be made which appropriately integrate such ICCAs within the existing PA structure.

Customary ICCAs have a much longer history of existence, often predating establishment of official PAs. Recognizing customary ICCAs within official PAs means recognizing and appreciating the fact that conservation has been happening in these areas long before government-induced conservation initiatives. Giving visibility to this historic reality is essential from the point of view of devising appropriate management strategies for the area. Recognizing that conservation was happening even before establishment of official PAs would lead to recognizing the specific processes and systems by which it is happening. This means respecting those processes and systems and local people

who are the real custodians of conservation. This would also mean giving them greater importance in current management practices. 'Failure to respect and support ICCAs within PAs can diminish or destroy their conservation effectiveness at a great cost to PAs' (Stevens 2009: 214).

ICCAs have immense potentials to strengthen Nepal's conservation efforts. It is not necessarily true that they are inherently better than collaborative governance or governance by government. However, the moot point is if ICCAs are recognized as a complementary system for conservation, it could greatly strengthen the overall conservation and PA system of Nepal. In short, the recognition of ICCAs adds important value to PAs.

7.3 How should Nepal protect and support its ICCAs? How should it recognize them as part of its national PA system?

Given the prevalence, diversity and wide-ranging benefits and values of ICCAs in Nepal, it is imperative that the state and conservation agencies in Nepal protect and support existing ones and encourage the creation of new ones. Given the reluctance, if not resistance, to acknowledge changing paradigms of PAs, changes in the mindsets of conservationists and PA officials is quintessential. With the significance, contribution and potentials of ICCAs, they deserve attention, appreciation, respect and adequate trust from the conventional domain of conservation and bureaucracy.

ICCAs that are facing pressing external threats or lacking technical capacities to deal with ecological challenges may wish to seek external support to enhance their conservation initiatives. The flow of external funding in the name of support should be transparently rooted to the local context, needs and priorities, in order to prevent internal dynamics and conflicts within the community.

Locating, indentifying and recording the relevant information of ICCAs, along with their respective communities, with their free, informed and prior consent is essential. National laws and policies can recognize and incorporate ICCAs into national PA system reforms and revisions.

Recognition of ICCAs is a sensitive issue and should not be pursued with through a blanket approach. ICCAs should not be straight-jacketed. In the process of formal recognition, the government should not impose new structures and conditions on communities. It should not be detrimental to existing practices and institutions, or jeopardize relative autonomy of ICCAs. Hence, decision about inclusion into the formal PA system should be vested in the respective communities. The right to self-determination and non-interference should be respected.

The government should not ignore or underestimate the status and contribution of existing ICCAs during the expansion or creation of new PAs. Hence, it should not override the existing practices with newer rules and regimes.

7.3 Way forward

Mapping and documentation: A nationwide mapping of ICCAs across the country both within existing PAs and beyond them, along with assessment of their status and documentation will be a crucial step to identify such sites and locations. This needs to be done, given the inadequate knowledge, absence of documentation and hundreds of such sites remaining unidentified.

Enabling policy environment: As the timely reform of the National Park and Wildlife Conservation Act is underway as per, it can accord newer space for ICCAs in the national legislation of PAs and recognizing this governance type towards enhancing systems of PAs in Nepal. Available policy spaces for ICCAs can be explored and further enhanced. A good example could be

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incorporating ICCAs during the revision of the National Wetland Policy. ICCAs can be embedded in various strategic plans and initiatives, such as the Terai Arc Landscape and the Sacred Himalayan Landscape, a region which is rich in customary ICCAs.

In the course of integrating biodiversity in the forestry sector, ICCAs offer immense opportunities to heighten the ecological viability of community forests, thereby creating a mosaic of community forests in a landscape. Policies concerning community forests can therefore address this aspect. In addition to significant revisions to laws and policies, ICCAs can be incorporated in management plans of PAs, as well as in district forest management plans.

National mechanism: A CBD POWPA focal point at the national level is required to constitute a multi-stakeholders committee. Issues and debates around ICCAs and other deliberations can be furthered by this national-level committee. Along with PA authorities, conservation NGOs, buffer zone councils, civil society groups and experts in such a committee; democratic spaces can be created for the representation of indigenous peoples and local communities from various ICCAs.

Capacity building: Many ICCAs may require technical support from the government and conservation organizations to deal with the several management-related affairs and tackle problems that are beyond the scope and capacity of local people. Hence, facilitating the role of external actors as per the local context and situation is also crucial.

Capacity building on the part of PA officials on issues of PAs governance, discourse, and international tools relevant to ICCAs, as discussed in the earlier section, is also important. This is crucial to fostering partnerships among government actors and communities.

Ensuring equity and good governance of ICCAs: There are some pressing issues that an enabling legislative and policy environment may not adequately address. Given the experiences of community forests and other community-based natural resource management practices in Nepal, particularly in a hierarchical societal structure of Nepali society, ensuring equity, representation and voices of the poor and marginalized social groups in ICCAs is definitely a challenge.

ICCAs and climate change: While several ICCAs are vulnerable to the impacts of climate change, It is evident that ICCAs could also be one of the strategies in climate change mitigation and adaptation of Nepal. Despite a limited understanding and knowledge about ICCAs, their relevance in connection to climate change is one of the arenas that require further inquiry.

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