

**FIAN Nepal's**

**Contribution focusing to call for input on the right to food and securing sustainable small-scale fisheries**

**Based on Guiding Question:** What are the main human rights challenges facing small-scale fishers and fish workers in your country?

**November 2023**

1. [**FIAN Nepal**](https://fiannepal.org/?lang=en) is a member-based human rights organization to promote and advocate for the realization of the human right to food in Nepal since December 2008.[[1]](#footnote-1)
2. **Small farmers:** Farmers having less than two hectares (five acres) of land are called small farmers in Nepal.
3. **Nepal has ratified most of the international human rights treaties[[2]](#footnote-2), and adopted most of the UN Declarations**[[3]](#footnote-3) with particular relevance for small holders farmers (UNDROP) and indigenous peoples’ rights – UNDRIP
4. **The Constitution of Nepal (2015)** guarantees the right to food and food sovereignty under its fundamental rights***[[4]](#footnote-4)***. The Right to Food and Food Sovereignty Act (2018) is promulgated as well as other Acts, e.g. on the right to live in dignity, the rights to land, the rights to work, housing, social security, the rights of women, children, and other particularly marginalized groups, and the right against discrimination and exploitation[[5]](#footnote-5). In addition, there are relevant sectoral laws/frameworks such as section (8) and sub-section 3 of the Act Relating to Rights of Persons with Disabilities 2074 (2017)[[6]](#footnote-6), section (7) and sub-section (2) of National Park and Wildlife Conservation Act, 2029 (5th amendment)[[7]](#footnote-7).

According to Article 261 and Sub Article 1,2,3,4 of Nepal’s constitution, to safeguard the rights of indigenous nationalities a separate commission of indigenous nationalities is to be established[[8]](#footnote-8) with the specific roles and functions of the entity. Several provisions[[9]](#footnote-9) under fundamental rights of Nepal's constitution secure the rights of indigenous peoples, e.g. to get education in one’s mother tongue[[10]](#footnote-10) and to protect/promote their own languages, scripts, culture, cultural civilization and heritages[[11]](#footnote-11).

1. **National Park and Protected Areas in Nepal:** The Nepal Government started to establish national park and conservation areas in 1972. Till date, Nepal has twelve national parks, one wildlife conservation area, one hunting conservation area, and six conservation areas. These areas cover around 23.39% of the land of Nepal[[12]](#footnote-12). Initially, such areas were established with the aim to protect and conserve valuable endangered flora and fauna, biological diversity and ecosystems as a whole. However, the intended and promised benefit sharing with those people residing in the indicated areas was poorly implemented, restricting peoples from accessing natural resources and practically turning them into outsiders in their ancestral land. As a result, conflicts emerged between park authorities and peoples living in buffer-zone[[13]](#footnote-13) areas. For example, affected communities joined forces in the 'No Buffer Zone and no protected areas' movement.[[14]](#footnote-14)
2. With the latest amendment of the National Parks and Wildlife Conservation Act, 1972[[15]](#footnote-15) (5th amendment) progressive provisions for specific groups[[16]](#footnote-16) of peoples in regards to their access to resources like forests and rivers were introduced[[17]](#footnote-17), in line with the rights set out by ILO Convention 169[[18]](#footnote-18) and UNDRIP[[19]](#footnote-19) article 26 (2)[[20]](#footnote-20). Article 5 sub article 2 and 3, have modest positive provisions[[21]](#footnote-21) for local people including indigenous peoples. According to those provisions, local indigenous people are allowed to collect and use wild fruits and vegetables, do fishing as traditional occupation, use water resources for drinking water and irrigation, collect wood, stones, and sand for the construction and re-construction of houses and shelter for cattle, and use, protect and conserve natural lakes and ponds for fishing and religious purposes. However, the amended act contains also a number of regressive provisions[[22]](#footnote-22), e.g. restrictions for local peoples to follow their traditional customary practices, ritual beliefs, or practices of their traditional occupations for their right to food and right to live. It is of concern that these provisions had not been included in the rules and regulations for the implementation of the Act, which were formulated based on the National Park and Wildlife Conservation Act (5th Amendment).

**Following some illustrative cases in regards to indigenous peoples’ farmer rights violation by the state of Nepal:**

***Case I: Bote Indigenous People's Deprivation from their Customary Traditional Occupation***

*297 members (60 Households) of Bote indigenous peoples (IPs) have been living in Patihani Village, ward no. 13 and 22 of Bharatpur Metropolitan City, Chitwan district, Bagmati province. The area is a buffer zone of Chitwan National Park and fishing and boating in Rapti River is the traditional occupation of Bote IPs. A family member from each Household is eligible for a fishing license as per the amended National Park and Wildlife Conservation Act, 1972, for which a yearly fee of NR 100 has to be paid to the National Park authority. However, in disregard of sub-section 2 of section 5 of National Park and Wildlife Conservation Act 1972 (5th Amendment 2017), National Park authorities have introduced four new rules. These rules implicate certain bans for fishing and thus deprive Bote from their traditional occupation. For example, National Park Authorities inserted a clause with regard to the fishing license renewal that for fishing yarn-nets shall be used instead of readymade nylon-nets. However, such yarn-nets are not available in the market and Bote people are not in a position to make yarn-net themselves. Another rule for the fishing license renewal is related to a strict schedule with regard to the fishing time and place. As these are practically not feasible, Bote peoples are facing violations of their right to food and access to natural resources. In the case of Bote, Nepal Government has violated its obligation to respect the right to food and nutrition[[23]](#footnote-23) and breached its own legislation.*

1. ULR: www.fiannepal.org [↑](#footnote-ref-1)
2. International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), Convention on Rights of Person living with disabilities, Convention on Elimination of All Forms of the Racial Discrimination (ICERD), ILO Convention on Indigenous and Tribal Peoples, UNESCO Convention on Biological Diversity 1992 [↑](#footnote-ref-2)
3. UN Declaration on Rights of Peasant (UNDROP, December 2018), UN Declaration on the rights of indigenous peoples (UNDRIP August 2007), 1969, UN/ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) [↑](#footnote-ref-3)
4. Article 36 of Constitution – 1) every citizen shall have the rights relating to food, 2) every citizen shall have the rights to be safe from the state of being in danger of life from the scarcity of food and, 3) every citizen shall have the right to food sovereignty in accordance with law; Constitution of Nepal, published in Nepal Gazette on 20 September 2015 (2072.6.3) [↑](#footnote-ref-4)
5. National Park and Wildlife Conservation Act 2029 (5th amendment), Land Use Act, 2018, Right to Housing Act, 2018, Compulsory Free Education Act 2018, Right to Public Health Services Act- 2018, Right to Employment Act, - 2018, Social Security Act, 2018 [↑](#footnote-ref-5)
6. (...) member of his or her family or guardian shall, on the basis of disability, make any kind of discrimination against a person with disability in the maintenance, care, provision of foods, distribution of property …. also section 16 of act secure the right to social security … persons with disabilities as prescribed shall have the right to obtain economic assistance or social security … <http://www.lawcommission.gov.np/en/> [↑](#footnote-ref-6)
7. National Park and Wildlife Conservation Act, 2029 (5th amendment) Section 7 and sub section (2): Local peoples allowed to use the facilities which they have been using traditionally such as - to collect wild resources (vegetables and fruits), fishing in the river, use drinking water resources, irrigation cannel, grazing land for their cattle, traditionally using road/street/ way for their daily movement. Likewise, local peoples also allowed to collect the forest resources taking the approval from chief warden form National Park if the local peoples are disaster affected and needs more forest resources which are not enough/available in the buffer zone areas where they living <http://www.dnpwc.gov.np/>, Land Use Act, 2018, Right to Housing Act, 2018, Compulsory Free Education Act 2018, Right to Public Health Services Act- 2018, Right to Employment Act, - 2018, Social Security Act, 2018 <http://www.lawcommission.gov.np/en/> [↑](#footnote-ref-7)
8. Nepal's Constitution Article 261 (1), there shall be an indigenous nationalities Commission of Nepal, considering of a Chairperson and maximum of four other members [↑](#footnote-ref-8)
9. Article 25- right relating to property, Article 35-right related to health, article 36 – right related to food, article 37- right to housing, [↑](#footnote-ref-9)
10. Nepal's Constitution article 31 (rights relating to education) and sub article (5): …. have the right to get education in its mother tongue and for that propos, to open and operate school and educational institutes, in accordance with law [↑](#footnote-ref-10)
11. Nepal's Constitution article 32 (rights language and culture) and sub article (3): …. have the right to preserve and promote its language, scripts, culture, cultural civilization, and heritage [↑](#footnote-ref-11)
12. Government of Nepal, Department of National Park and Wildlife Conservation http://www.dnpwc.gov.np/ne/ [↑](#footnote-ref-12)
13. Buffer zone in Nepal means the peripheral area of national park/wildlife reserve where people have usufruct right on the resources. Buffer zone concept implies that the establishment of protected areas has measurable impact on adjoining areas and the people living there and vice-versa. [↑](#footnote-ref-13)
14. Chitwan, Sandesh News Desk, 2077.04.15. *Madi Municipality is initiating process to remove buffer zone areas from the human settlement as conflict between park and peoples increased every day. Further, Municipality facing several hurdle to operate development activities within the municipality as they local government needs to get approval from park authorities each and every time….*  [↑](#footnote-ref-14)
15. Act 5th Amendment in 2017 and published in Nepal gazette on 2073/12/17 (30 March 2017) [↑](#footnote-ref-15)
16. Indigenous community people'' whose traditional occupation and livelihood are mostly belong to forest and river related resources [↑](#footnote-ref-16)
17. As per Article 7 (2) National Park and Wildlife Conservation Act 1972 (5th amendment on 30 March 2017) *local people are allowed to use the facilities which they have been using traditionally such as - to collect wild resources (vegetables and fruits), fishing in the river, use drinking water resources, irrigation cannel, grazing land for their cattle, traditionally using road/street/ way for their daily movement. Likewise, local people are also allowed to collect forest resources after the approval from chief warden form National Park if the local peoples are disaster affected and need more forest resources than the ones available in the buffer zone areas where they live..* [↑](#footnote-ref-17)
18. International Labour Organization, Indigenous and Tribal Peoples Convention No. 169 [↑](#footnote-ref-18)
19. UN Declaration on the Rights of Indigenous Peoples [↑](#footnote-ref-19)
20. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of tra­ditional ownership or other traditional occu­pation or use, as well as those which they have otherwise acquired [↑](#footnote-ref-20)
21. Whatever mentioned in the sub-article (1), local peoples are able to use road/street insides of national park which they are using traditionally, grazing land for their livestock, drinking water, irrigation cannels, collection of wild fruits and vegetables, fishing for specific indigenous communities, use of wood for constructions/re- constructions of houses and shed for castles, river resources (sand/stone) and so on. However, local peoples need to get approval from park authorities to do so. [↑](#footnote-ref-21)
22. Article 5 – activities/actions restricted in national park (sub-article a to j) National Park and Wildlife Conservation Act, 1972 (5th amendment 30 March 2017) [↑](#footnote-ref-22)
23. FIAN Nepal Case Documentation of Bote Indigenous Right to Food Violation and regular Case Work following the case documentation (2018 till date) [↑](#footnote-ref-23)