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National Parks and ICCAs in the High Himalayan Region of Nepal: Challenges and Opportunities

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Abstract

In Nepal, as in many states worldwide, national parks and other protected areas have often been established in the customary territories of indigenous peoples by superimposing state-declared and governed protected areas on pre-existing systems of land use and management which are now internationally considered to be Indigenous Peoples' and Community Conserved Territories and Areas (ICCAs, also referred to Community Conserved Areas, CCAs). State intervention often ignores or suppresses ICCAs, inadvertently or deliberately undermining and destroying them along with other aspects of indigenous peoples' cultures, livelihoods, self-governance, and self-determination. Nepal's high Himalayan national parks, however, provide examples of how some indigenous peoples such as the Sharwa (Sherpa) of Sagarmatha (Mount Everest/Chomolungma) National Park (SNP) have continued to maintain customary ICCAs and even to develop new ones despite lack of state recognition, respect, and coordination. The survival of these ICCAs offers Nepal an opportunity to reform existing laws, policies, and practices, both to honour UN-recognised human and indigenous rights that support ICCAs and to meet International Union for Conservation of Nature (IUCN) and Convention on Biological Diversity (CBD) standards and guidelines for ICCA recognition and for the governance and management of protected areas established in indigenous peoples' territories. The challenge will be for Nepal to reverse long-established inter-ethnic and governmental relationships which have dispossessed and marginalised indigenous peoples and insufficiently respected their knowledge, institutions, conservation contributions, and human rights in national parks. This article explores the political ecology of ICCAs in Nepal's Himalayan national parks, with particular focus on SNP.

Keywords: protected areas, indigenous peoples, Indigenous Peoples' and Community Conserved Territories and Areas, ICCAs, national parks, Nepal, Sharwa, Sherpa, Mount Everest, Sagarmatha National Park

INTRODUCTION

The declaration by states of national parks and other protected areas in so many indigenous peoples' traditional or customary territories worldwide has made them a key site of interaction between states and indigenous peoples (Peluso 1993; Ghimire and Pimbert 1997; Stevens 1997a; Zimmerer 2000;

Brechin et al. 2002; Neumann 2004; West et al. 2006; Adams and Hutton 2007; Brockington et al. 2008; Dowie 2009).¹ Such protected areas embody diverse political ecologies. They have often been expressions of colonialism, 'internal' colonialism, and state territorialisation, sites of the coercive expropriation and control of indigenous peoples' and local communities' lands, waters, and lives. State-governed protected areas often have violated human rights and internationally-affirmed rights of indigenous peoples, provoking conflicts over ownership and control of territory, natural resource use and management, self-governance, and self-determination. Such protected areas have undermined or threatened cultural integrity, social solidarity, and livelihood security, at times with adverse repercussions for biodiversity conservation (Stevens 1997a; Peluso 1993; Nietschmann 1994; Colchester 1997; Brechin et al. 2002; Neumann 2004; Brockington et al. 2008; Dowie 2009).

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There are, however, also diverse other kinds of ‘new paradigm’ protected areas which indigenous peoples create or authorise through their free, prior, and informed consent and which they govern or share governance of (Colchester 1997; Stevens 1997a, 2010; Phillips 2003; Borrini-Feyerabend, et al. 2004). In recent years, such protected areas have been endorsed and promoted by the International Union for Conservation of Nature (IUCN), the Parties to the Convention on Biological Diversity (CBD), and an increasing number of states (WCPA 2003 a,b; COP CBD 2004; IUCN 2004, 2008 a,b,c,d, 2012). They reflect political and social relationships and interactions based on respect for cultural difference, appreciation of the conservation significance of indigenous peoples’ knowledges, beliefs, values, institutions, and practices, recognition of their stewardship responsibilities, and affirmation and facilitation of their human and indigenous rights, including their rights to territory, self-determination, and cultural integrity.

Indigenous Peoples’ and Community Conserved Territories and Areas (ICCAs, also referred to as Community Conserved Areas, CCAs) are emblematic of the new paradigm and have been central to IUCN and CBD efforts to reform global protected area-based conservation (Phillips 2003; Borrini-Feyerabend et al. 2004, 2008a,b, 2009, 2010a,b, 2013; Kothari 2006a,b; Stevens 2010; Kothari et al. 2012). As places where indigenous peoples and local communities exercise “predominant or exclusive control and management” and achieve conservation “through customary laws or other effective means” (WCPA 2003b), the concept of ICCAs has resonated with the aspirations and concerns of many indigenous peoples and has been rapidly developed and promoted in international indigenous peoples’ and conservation circles (see Borrini-Feyerabend et al. 2004, 2008a,b, 2010a,b, 2013; Kothari 2006a,b; Kothari et al. 2012). The IUCN and the Parties to the CBD now advocate ICCAs as integral and critical components of the global conservation of biodiversity and endorse their recognition by states as protected areas (WCPA 2003b; COP CBD 2004; IUCN 2004, 2008b, 2012; Dudley 2008). IUCN (2012), in World Conservation Resolution 2012 0.94 (1.e) Respecting, Recognizing and Supporting Indigenous Peoples and Community Conserved Territories and Areas, also advocates that states and conservation non-governmental organisations (NGOs) “recognize and support ICCAs in situations where they overlap with protected area and other designations.” IUCN, moreover, endorses the concept of Indigenous Conservation Territories (ICTs), which are large ICCAs encompassing all or much of an indigenous people’s customary territory (and often including smaller, local ICCAs) that are established and maintained by indigenous peoples at their own initiative and through their own culture (IUCN 2008b,c).² Implementation of these policies and best practice guidance will require reform of the governance arrangements and management of a vast number of protected areas worldwide (Borrini-Feyerabend et al. 2004, 2010 a,b, 2012; Dudley 2008; Stevens 2009, 2010; Jonas et al. 2012; Kothari 2012).

This article explores the political ecology of ICCAs in the Himalayan region of Nepal, where national parks have been

superimposed on pre-existing indigenous peoples’ customary territories, institutions, and practices which constitute ICTs and ICCAs. I focus on the four large high Himalayan national parks, which comprise nearly three quarters of the total area in national parks in Nepal. I particularly emphasise the country’s most famous national park and natural World Heritage Site, Sagarmatha (Mount Everest/Chomolungma) National Park (SNP), which is the homeland of the indigenous Sharwa (Sherpa) people.³ I discuss these Himalayan national parks and ICCAs in the contexts of evolving international protected area and rights standards. From these perspectives, ICCA recognition is integral to implementing rights-based conservation and international human and indigenous rights treaties and conventions, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and current international protected area policy. Appropriate recognition of ICCAs in Nepal’s high Himalayan national parks, however, is hampered by the poor status of indigenous peoples and indigenous rights recognition in Nepal. I suggest that indigenous peoples’ important contributions to conservation in these national parks are undermined and threatened by inadequate recognition and respect for their ICCAs in national legislation, Department of National Park and Wildlife Conservation (DNPWC) policies and practices, and national park management planning. This lack of recognition appears to reflect continuing widespread social and political discrimination and marginalisation of indigenous peoples in Nepal, lack of central government awareness and appreciation of the conservation contributions made by ICCAs, and lack of commitment to fulfilling Nepal’s international human and indigenous rights treaty obligations in national parks or meeting current international conservation standards. Nepal’s experience with ICCAs and indigenous rights recognition in national parks may have parallels in many countries, and suggests that international conservation standards that recognise and respect ICCAs may prove especially difficult to implement in existing state governed protected areas.

My discussions of the situation in SNP draw on my ethnographic, interview-based fieldwork in the Sharwa villages within the national park since 1982, attendance at community meetings and meetings of local NGOs, participation with Sharwa leaders in national and international meetings and workshops, and conversations with Sharwa cultural, political, and conservation leaders, SNP administrators, and Department of National Parks and Wildlife Conservation officials. For the other Himalayan national parks, I rely on the academic and gray literatures and on conversations with indigenous leaders at national protected area governance and ICCA workshops and meetings in 2008 and 2010.

LINKING CONSERVATION WITH THE RECOGNITION OF RIGHTS

For many countries, the recognition of ICCAs provides a means to comply with international protected area standards and recommendations and an important opportunity to demonstrate

commitment to the honouring of internationally-affirmed human rights and indigenous rights (Stevens 2010). The rights of indigenous peoples and other communities to maintain ICCAs are grounded in diverse rights identified in multiple international human and indigenous rights conventions and declarations including UNDRIP, the International Labor Organization Convention 169 on Indigenous and Tribal Peoples (ILO 169), and major UN human rights treaties. ILO 169 includes at least 22 articles relevant to ICCAs. These include indigenous peoples' rights to the recognition of their ownership and control of customary territories, collectively-owned lands, and natural resources; self-governance and self-determination; participation in decision-making about development; maintaining and revitalising culture, institutions, and practices; and collective as well as individual human rights and freedoms (Stevens 2009, 2010, Forthcoming). As many as 41 articles of UNDRIP are relevant to the establishment, governance, and management of protected areas in indigenous peoples' lands and to recognition of ICCAs, including provisions affirming indigenous peoples' collective ownership and control of territory and natural resources; maintenance of cultural integrity including customary institutions; management of sacred places; self-governance; self-determination; free, prior, and informed consent; and participation in decisions affecting themselves and their lands. Further support for ICCAs is given by key international human rights treaties which affirm rights to collective cultural practices, natural resource use and management, collective property ownership, and self-determination (these treaties include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination (Stevens 2009, 2010, Forthcoming).

ICCAs thus are a key form of rights-based approaches to conservation (Alcorn and Royo 2007; Campese 2009; Greiber et al. 2009; Stevens 2009, 2010; Shrumm and Campese 2010). Rights-based conservation affirms human and indigenous rights by recognising that 1) indigenous peoples and local communities are "rights-holders" and not merely "stakeholders" in their customary territories, with rights recognised in UNDRIP, ILO 169, and international human rights treaties; 2) states and NGOs associated with protected areas are "rights duty-bearers"; 3) indigenous rights and human rights must be honoured in protected areas; 4) rights establish parameters for state and NGO conservation interventions in indigenous peoples' lands and lives; 5) rights-based conservation requires adoption of protected area governance and management approaches which foster the realisation of rights, particularly through governance of protected areas by indigenous peoples and local communities or through their participation in appropriate shared governance; and 6) appropriate recognition and respect for ICCAs (Stevens 2010).

Many countries have not, however, appropriately recognised ICCAs through legal or other means with the participation and

consent of indigenous peoples (Borrini-Feyerabend 2010a,b, Stevens 2010; Jonas et al. 2012; Kothari et al. 2012). Both the recognition of ICCAs as protected areas and the recognition of ICCAs within state protected areas present an enormous challenge for countries in which inter-ethnic discrimination and domination have dispossessed, discriminated against, and marginalised indigenous peoples. National social, political, and economic contexts in these countries may permeate national law and policies in ways which have profound bearing on conservation, protected areas, indigenous peoples, and ICCAs. ICCAs can be critically affected by the status of national legal recognition of and on-the-ground respect for indigenous peoples' territories, collective land tenure, customary law, self-governance, institutions (governmental, natural resource management, and other cultural/social institutions), culture, customary livelihood practices, and participation (and free, prior, and informed consent) in decision-making about regional development and conservation. Whether or not ICCAs are appropriately recognised and supported by states thus often is entwined with national inter-ethnic social, political, and territorial relations as well as protected area law and policies.

Lack of human and indigenous rights recognition can make appropriate affirmation and respect for ICCAs as protected areas or within protected areas difficult or impossible. When states do adopt standards and procedures for ICCA recognition in these circumstances they may erect insurmountable barriers to recognition of customary ICCAs or make a mockery of the concepts of ICCAs and rights-based conservation by recognising as supposed 'ICCAs' only institutional arrangements designed and controlled by the state or non-indigenous conservation NGOs.

NEPAL'S NATIONAL POLITICAL AND SOCIAL CONTEXT

The government of Nepal has legally identified 59 different indigenous peoples or *adivasi janajati* under the 2002 National Foundation for Development of Indigenous Nationalities Act. In 2010, another twenty-two peoples were proposed for recognition by a national commission (LAHURNIP 2010b). The 59 currently recognised indigenous peoples collectively constitute at least 37% of the population (and may well exceed this due to past under-enumeration) and have claim to most of Nepal's land area as customary territories. Sharwa have long been among the leaders of the national indigenous peoples' movement and they and all the other resident peoples of the high Himalayan national parks are among the peoples recognised as *adivasi janajati* by the Nepal government. *Adivasi janajati* are defined in the 2002 Act as those ethnic groups or communities that "have their own mother tongue and traditional customs, distinct cultural identity, distinct social structure and written or oral history of their own." The National Foundation for Development of Indigenous Nationalities (NFDIN), which has governmental authority concerning indigenous peoples' issues, also considers association with a traditional homeland or geographical area

to be a core component of identifying indigenous peoples in Nepal (LAHURNIP 2010c). While this definition could apply to most of Nepal's population, in Nepal (and internationally), only non-Hindu peoples whose first language is not Nepali have been considered to be *adivasi janajati* or indigenous peoples (Anaya 2009).⁴ Indigenous peoples, as interpreted by the 2002 National Foundation for the Uplift of Adivasi Janajati Act (Cultural Survival 2004) are:

1. Those who have ethnic languages other than Nepali
2. Those who have distinct traditional customs other than that of ruling high castes
3. Those who espouse distinct cultures other than the Hindu culture of dominant groups
4. Those who have distinct social structures that do not fall under the hierarchical *varna* or caste system
5. Those who have written or oral history that traces their line of descent back to the occupants of their territories before the annexation into present Nepal
6. Those who are included in the list of *adivasis/janajatis* published by the government of Nepal

In this context, the Nepali-speaking upper Hindu castes are considered to constitute a dominant national ethnic elite rather than an indigenous people, and have been accused of socially, politically, and economically excluding, marginalising, discriminating against, and oppressing Nepal's diverse indigenous peoples for two centuries. Indigenous peoples' customary territories were expropriated and forcibly annexed into the Nepal empire in the late eighteenth and early nineteenth centuries, primarily through military conquest, and in the twentieth century the Nepal state reneged on promises to some peoples to respect their collective lands and self-governance. Indigenous peoples recount histories of invasion, dispossession, and what some characterise as "internal colonialism" that includes state encouragement of the settlement of their lands by other peoples and ethnic groups, the nationalisation of forests and grazing lands, imposition of protected areas, and increased state intervention after 1950 in their territories and governance. This has included the implementation of national laws and institutional arrangements which conflicted with their customary values and practices. One aspect of this has been the promotion of assimilation through the national school system and other measures aimed at creating a single national culture based on the religion, language, and customs of the dominant ethnic elite (Battachan 2000, Undated; Lawotri 2001; Gurung 2003; Upreti and Adhikari 2006; Anaya 2009; Limbu Undated).

For two centuries, indigenous peoples in Nepal have had little opportunity to participate in national government, including the bureaucracy, and individual indigenous people who have held positions in government have had little opportunity to assert their identities as indigenous peoples or to promote rights recognition. Since 1990, a nascent national indigenous peoples' movement has promoted greater awareness of the plight of indigenous peoples and has campaigned for constitutional and other legal recognition of indigenous rights, for full and effective participation of indigenous peoples in

national government, and for the establishment of indigenous peoples' regional states or autonomous regions within the federal republic of Nepal. The movement has encountered considerable resistance, but did succeed in negotiating the Nepal government's ratification of ILO 169, the first country in Asia to do so (Battachan 2000, Undated; Lawotri 2001; Gurung 2003; Anaya 2009; Limbu Undated). Lack of implementation of ILO 169 thus far, however, is a major cause for concern.

Under Nepalese law, international treaty obligations take precedence over conflicting national law. This principle, however, has not yet been applied to any ILO 169 provisions, and current national law offers little scope for improved rights recognition. A 2009 high-level inter-ministerial committee charged with recommending revisions to existing laws to comply with ILO 169 identified hundreds of laws that require reform (LAHURNIP 2010a). As of early 2013, however, none of these laws have been amended or replaced. Nepal has not legally recognised or affirmed, for example, indigenous peoples' territories; collective "ownership" or custodianship of lands and waters; customary law; or right to use, manage, and conserve land, water, and natural resources through their culture, self-governance, and customary institutions and practices (Battachan 2000, Undated; Lawotri 2001; Gurung 2003; Upreti and Adhikari 2006; Jana 2007; Paudel et al. 2007; Anaya 2009; Limbu Undated). Whether such rights will be recognised in the new constitution, which has been in development since 2008, is far from certain, and their further incorporation into new, effectively-implemented legislation and policies will also be a challenge. National rights recognition which fails to meet the standards of ILO 169, or is not implemented in Nepal's extensive protected area system, will likely face increasing international scrutiny and domestic court challenges, and may spark direct action by indigenous peoples, as suggested by recent mass protests against lowland protected area policies and practices (Jana 2008). New protected area legislation and policies which fully and effectively affirm and promote human rights and the rights of indigenous peoples throughout Nepal's protected area system, by contrast, could transform conservation and social justice across nearly a quarter of the total area of the country.

HIMALAYAN NATIONAL PARKS AND INDIGENOUS RIGHTS

Protected areas, including national parks, now constitute approximately 20 per cent of the total landmass in Nepal. Often these areas were created at the expense of indigenous lands. In the Himalayas, most of the land areas of the six existing national parks cover Adivasi Janajati [indigenous peoples] traditional lands. The National Parks and Wildlife Conservation Act provides no recognition of indigenous peoples' right to consultation or to access their traditional lands and resources, while giving quasi-judicial powers to the park chief wardens.

– James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples (2009)

Most of the Protected Areas (of Nepal) are established in indigenous peoples' territories... The parks were organized according to a traditional, exclusionary PA [protected area] model and indigenous and local communities were not allowed their activities... protected areas have been established on indigenous peoples' territories without their prior informed consent, and their rights and interests were not taken into account. Forced removal and relocation, cultural collapse, social and political marginalization, [and] impoverishment and destruction of age-old community-based natural resource management regimes have all ensued. Through the years, the establishment of national parks has had severe, adverse impacts on local traditions and beliefs.

– Parshuram Tamang, member, UN Permanent Forum on Indigenous Issues (2003)

Since the early 1970s, Nepal has established an extensive national network of diverse types of protected areas. These 32 protected areas include ten national parks, six conservation areas, three wildlife reserves, one hunting reserve, and twelve national park or wildlife reserve buffer zones (the government of Nepal considers these buffer zones to be protected areas and internationally reports them as such).⁵ The goals, policies, and governance of these different types of protected areas vary considerably. There are strong contrasts between the national parks and wildlife reserves, which are governed by the DNPWC with an emphasis on strict nature protection, and the conservation areas and buffer zones which—while also under the administrative oversight of the DNPWC and also consisting of land nationalised from the territories and collective lands of indigenous peoples and local communities—have varying degrees of shared governance as well as management goals that acknowledge greater human use (Stevens 1997b; Heinen and Mehta 1999, 2000; Heinen and Shrestha 2006). Policies also differ strikingly between the lowland and Himalayan national parks as a result of the DNPWC's Himalayan National Parks Regulations, 1979, which enable uses which are banned in lowland national parks to be authorised and regulated by the administrators of Himalayan national parks, including livestock herding, stone quarrying, and the use of forests for timber and firewood (Stevens 1997b). These variations caution against assuming that the generally poor relationships between the Nepal state, including the DNPWC, and indigenous peoples necessarily result in uniformly exclusionary and oppressive laws, policies, and practices.

In this article, I focus on the high Himalayan national parks, whose resident indigenous peoples have had significant commonalities of experience in their relationships with the DNPWC and who have been subjected to similar protected area governance and management. It is timely to assess the situations of indigenous peoples and their ICCAs within the national parks for several reasons. These include the increased international attention to human rights and indigenous rights violations in Nepal's national parks; state officials' tendency to highlight the more 'progressive' policies implemented in

conservation areas and buffer zones while avoiding discussion of conditions in the national parks; lack of attention to issues of good governance, equity, and rights recognition in national park law, regulations, and policies; and the continuing injustices experienced by the indigenous peoples whose territories are now administered as national parks.

Nepal's protected area system currently encompasses 23% of the total area of the country (Figure 1). The Himalayan protected areas are particularly extensive, with the 19 Himalayan protected areas accounting for 83% of the total area in protected areas, including 77% of the area in national parks, 99% of the land in conservation areas, and 61% of the area in buffer zones. Seven of Nepal's ten national parks are in the Himalayan region. Four of these Himalayan national parks are located in the high Himalayan region and include substantial areas above 3,500 meters. These high Himalayan national parks—Sagarmatha (Mount Everest), Makalu-Barun, Langtang, and Shey-Phoksundo—are the only Nepalese national parks larger than 1,000 sq. km. Together they constitute 73% of the total area in Nepal's national park system. All are the customary territories and continuing homelands of indigenous peoples.

The Himalayan region of Nepal is the homeland of at least 37 of Nepal's 59 recognised indigenous peoples, and is a magnificent cultural landscape shaped by centuries of their settlement, land use, expressions of faith and care for sacred sites, and conservation stewardship through ICCAs. The four high Himalayan national parks are the traditional territories of the Sharwa, Dolpo-pa, Yolmo, Tamang, Langtangpa, and Rai⁶ peoples, all of whom continue to inhabit permanent and/or seasonal settlements within the national parks and to maintain land use and management systems that can be considered to be ICCAs. This contrasts with the lowland national parks (Chitwan, Bardia, and Banke) and with Rara National Park in western Nepal, whose resident indigenous peoples and local communities were displaced by the establishment and expansion of those national parks or precursor wildlife reserves (Brown 1997; McLean 1999; Müller-Böker 1999; Battachan 2000; McLean and Straede 2003). The four high Himalayan national parks were declared between 1976 and 1991, in each case without the consent or meaningful participation of resident indigenous peoples and other local communities. Indeed, at least three of the four (Sagarmatha, Langtang, and Makalu-Barun) were established in spite of the strong objections of resident indigenous peoples.

Indigenous peoples were not relocated from the high Himalayan national parks, but instead their collective lands were nationalised and placed under national park administration while their homes and crop fields were officially excluded from the parks and became enclaves of private lands within them. Indigenous peoples lost governance and management authority over their territories and collectively-managed lands and their ICCAs were superseded by state policies, regulations, and enforcement mechanisms. This did not change when national park buffer zones were established. Beginning in 1998 with Langtang and Shey-Phoksundo National Parks, the Nepal

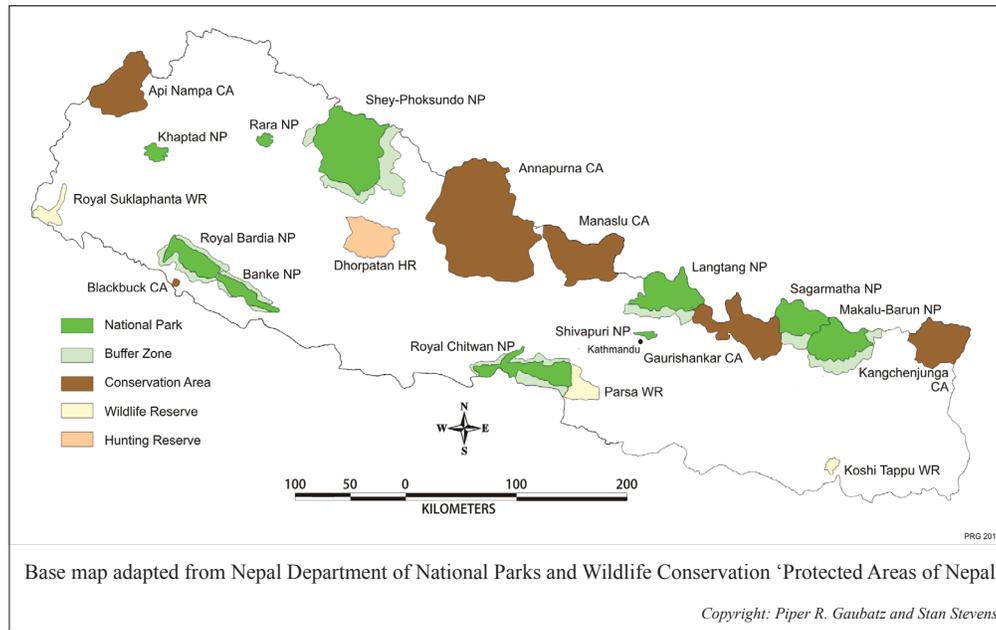


Figure 1
Nepal's protected areas

government declared buffer zones for all four high Himalayan national parks. Like the national parks, these were declared without the full and effective participation or free, prior, and informed consent of the indigenous peoples who live in them. In each case, the government included national park enclave settlements in the buffer zone as well as areas adjacent to the national park. But land governance and management have differed sharply between the enclave settlements and the buffer zone areas outside the perimeter of the national parks. In buffer zone areas outside of the national parks, the authority to govern customary village lands (including livelihood forest and grassland commons) has been devolved to buffer zone community forest user groups under the supervision of national park authorities. In the case of the national park enclave settlements, however, only the houses and crop fields of residents became part of the buffer zone—all community forests, grazing lands, and other nationalised, formerly collectively-owned lands and natural resources remained under national park governance. Here, buffer zone status brought no new formal institutional mechanisms for participation in national park management through ICCAs.⁷

While the establishment of the high Himalayan national parks did not lead to the eviction or relocation of indigenous peoples, as many feared, they have economically, culturally, socially, and politically dispossessed and disadvantaged them. The imposition of national parks has undermined their control of their territory and lives; their customary relationships with their lands, each other, and their spirits and gods; and their use and management of their forests, pastures, and cultural sites. Livelihoods and culture have both been greatly affected by imposed bans or severe restrictions on hunting, forest use, swidden agriculture, and other land use and management practices (Stevens 1993; Campbell 2005; Armbrrecht 2009).

National park policies, regulations, and practices that ignore indigenous peoples' customary law and institutions (and the local knowledge, cultural values, religious beliefs, and community solidarity they are based on) can be considered to violate their cultural and social integrity and to jeopardise their livelihood security by imposing natural resource management practices based only on outsiders' ideas about how they should live and what the character of their homeland should be.

This situation in which indigenous peoples' rights to territory, self-governance, use and management of natural resources, and cultural integrity have gone unrecognised in the national parks has prompted comment by James Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples. Anaya devoted considerable attention in his 2009 country report on Nepal to rights issues that have relevance for national park governance and management.⁸ He recommended inter alia that:

1. The "OHCHR [Office of the UN High Commissioner on Human Rights]...should conduct a study on the situation of the Adivasi Janajati in relation to lands and natural resources, including the situation in national parks and development projects affecting indigenous traditional territories" (Paragraph 100);
2. A "mechanism should be developed to provide redress to Adivasi Janajati communities and their members for their loss of land or access to natural resources without their free, prior and informed consent, including when that loss has occurred by the establishment of protected areas... redress should include, where possible, restoration of indigenous peoples' access to resources or a return of their land" (Paragraph 90d);
3. *Adivasi janajati* should have "the right to autonomy or self-government in relation to their own affairs, including the right to maintain their customary laws and

justice systems with due respect for universal human rights; the right to participate in decision-making at all levels of authority in relation to matters affecting them; rights over territory and natural resources in accordance with customary patterns, and the right to maintain and develop the various aspects of their distinctive cultures” (Paragraph 88j); and

4. “The National Parks and Wildlife Conservation Act should be amended to include enhanced participation of Adivasi Janajati in the management of the parks and guarantee their access to natural resources on which they traditionally have depended for subsistence, as well as to provide them the opportunity to share justly in the financial and other benefits of the parks” (Paragraph 90e) (Anaya 2009).

HIMALAYAN NATIONAL PARK REGULATIONS AND RIGHTS

The Himalayan National Park Regulations, 1979, are sometimes said to recognise the rights of residents to subsistence use of natural resources (Stevens 1997b; MFSC 2007). But these regulations establish procedures for national park wardens to grant conditional natural resource use privileges at their discretion rather than acknowledging inalienable rights which the state has the responsibility to honour.⁹ Indeed, in the Himalayan National Park Regulations (1979), the word “rights” is not used. With regard to forest use, for example, the regulations merely state that “timber and firewood can be provided” in that “the Warden may issue a permit...to the local person desirous to collect timber and firewood for the construction or repair of the house... [and] the timber and firewood shall be collected only from the areas specified in the permit” (Regulation 24). Similarly, according to the regulations, “grazing may be carried out” under national park management with the specification that “the local inhabitants may graze their domestic animals or fix grazing camps within the park only in areas designated by the Warden” (Regulation 27). Other land uses “shall not be carried out in the park without securing a written permission of the Warden” (Regulation 7).

Under permit systems and other regulations, varying degrees of continued grazing, cutting of wild grass for fodder, collection of deadwood for use as fuel, felling of trees for house construction, and quarrying of stone have been permitted in Himalayan national parks. In many cases, however, this may not constitute protection of customary access and use of natural resources because the regulations imposed by the national park wardens make it impossible for indigenous peoples to rely on natural resources to a customary degree. Some customary natural resource uses, moreover, have been prohibited altogether. Bans have been placed, for example, on customary subsistence and on long-standing, small-scale market hunting, fishing, swidden farming (rotational forest farming), collection of non-timber forest resources, wild foods, and medicines, and the burning of forest floors and grasslands to improve grazing. These bans ignore the importance of these activities to indigenous peoples’ cultures and livelihoods and their roles

in maintaining cultural landscapes and ecosystems (Stevens 1993, 1997b; Campbell 2005).

Under these regulations, moreover, wardens are given sole authority over natural resource management. There is no acknowledgement that land use should be subject to customary law, values, and practices, or that indigenous peoples should participate in protected area governance and management, including the making of policy and regulations. Natural resource management and the protection and care of sacred places have not been legally delegated to indigenous peoples in the Himalayan national parks (despite a provision in the National Park and Wildlife Conservation Act for management of some types of land use by users groups).¹⁰ The national parks instead, are administered solely by the government’s Department of National Parks and Wildlife Conservation. There are no co-managed national parks (in contrast to conservation areas and buffer zones). There are no national park advisory committees.¹¹ None of the current national park wardens or senior DNPWC staff are indigenous people.¹² Very few (if any) indigenous peoples are employed as senior staff (rangers) by the various Himalayan national parks. National park management plans are developed in Kathmandu by the DNPWC and approved professional consultants and authorised by the Ministry of Forests and Soil Conservation (MFSC). Although in some cases indigenous peoples have been consulted, the level of their involvement arguably falls short of full and effective participation. Regulations to implement management plans are devised by the DNPWC, authorised by the MFSC, and enforced by an army ‘protection unit’ as well as by park staff (Makalu-Barun National Park alone does not use troops to enforce regulations).

While the Himalayan National Park regulations may have been considered progressive when they were developed in the 1970s (Stevens 1997b), they no longer reflect international standards about indigenous peoples and protected areas or meet Nepal’s legal responsibilities to comply with international human rights and indigenous rights treaty commitments. The same is true of the National Parks and Wildlife Act (1973). This act has been amended five times, but none of these revisions address indigenous rights or fully incorporate CBD or IUCN policies and recommendations about protected areas and indigenous peoples. One indication of the degree to which policy and practice have fallen short of these responsibilities is that Nepal’s national park legislation and DNPWC policies, regulations, and plans avoid use of the term “indigenous peoples” and refer instead to “local inhabitants”, “local people”, “local residents”, or “stakeholders”. This practice of ignoring the indigeneity of the populace of protected areas has been identified by Alcorn and Royo (2007) as one of several “red flags” with respect to indigenous rights recognition. Until indigenous peoples’ legal status is acknowledged in Nepal’s national parks, there seems little likelihood that the government will adequately respect these peoples’ rights to natural resource use, collective land ownership, restitution of land nationalised without their consent, land and water management through institutions of their choice—including

customary ones, custodianship of sacred places, or full and effective participation in national park governance.

HIMALAYAN NATIONAL PARKS AND ICCAs

ICCAs are neither recognised as protected areas in their own right in Nepal nor as self-governing, culturally-based systems within the government-declared protected areas that have often been superimposed over them (Stevens 2008a, 2010; Jana and Paudel 2010).¹³ As a result, the significant conservation stewardship contributions made by indigenous peoples and local communities through their cultures and customary institutions go unheralded and unsupported both within and outside of national parks and other state-recognised protected areas. This is an important issue both because it fails to recognise indigenous rights and because long-standing conservation achievements are put at risk when indigenous peoples' efforts to maintain their ICCAs are ignored and unsupported at a time when many struggle to cope with cultural, social, and economic changes associated with national integration, globalisation, climate change, and other challenges.

The four high Himalayan national parks were all declared on indigenous peoples' territories and all were superimposed on pre-existing institutions and practices that can be considered to be ICCAs. These include both Indigenous Conservation Territories and many local and micro-regional ICCAs. ICTs are large ICCAs grounded in indigenous peoples' conceptions of territory, relationships with the world, and sense of responsibility. They comprise entire customary territories or large parts of them, typically including many small, local or micro-regional ICCAs such as community-governed forests, grasslands commons, and sacred natural sites. The four high Himalayan national parks overlap with large ICTs maintained by the Sharwa, Dolpo-pa, Yolmo, Langtangpa, Tamang, and Rai peoples in the lands they have traditionally lived in, used, and managed. Across vast areas, including the present high Himalayan national parks and buffer zones, these peoples have conserved nature through Buddhist beliefs in the sanctity of all life; respect for Buddhist, Bon, and other sacred places, beliefs and values that guide ways of life and interactions with the world; institutions that regulate land use in community forests and grazing lands (including transhumance and swidden farming); and culturally-diverse land use practices grounded in site-specific indigenous knowledge and experience.

Religious beliefs contribute significantly to conservation in these high Himalayan ICTs. It is remarkable that all four high Himalayan national parks include sacred valleys. Three of these national parks—Sagarmatha, Makalu-Barun, and Langtang—are encompassed by or include *beyuls*—sacred Himalayan hidden valleys and Buddhist sanctuaries believed to have been consecrated in the eighth century CE by the Buddhist adept Padmasambhava. For Buddhist peoples such as the Sharwa of SNP (*Beyul* Khumbu) and Makalu-Barun National Park (*Beyul* Khenbalung), and the Langtangpa and the Yolmo of Langtang National Park (*Beyul* Dagam Namgo in Langtang Valley, *Beyul* Yolmo Kangra in Yolmo), these are among the

most important sacred natural sites in the Himalayan region and Tibet (Diemberger 1997; Sherpa 2003; Baker 2004; Lim 2008; Spoon and Sherpa 2008).¹⁴ The fourth high Himalayan national park, Shey-Phoksundo, also has a sacred valley, the valley of Kunasa, in which there are multiple sites sacred to the Dolpo-pa who follow the Bonpo religion (Aumeeruddy-Thomas 2004). In the Khumbu case, the Sharwa maintain a strong cultural proscription against killing that they seek to apply in the *beyul* even for non-Sharwa, and they have long sought to prevent hunting, animal sacrifice, or the slaughter of livestock within the *beyul* by poachers, police, national park staff, and national park army protection unit members.

In all four of the Himalayan national parks, there are also many local and micro-regional ICCAs. These include diverse sacred natural sites (mountains, forests, trees, lakes, springs, caves, and rock formations), community-managed rotational grazing systems, and community-managed forests. The work of documenting and analysing these many ICCAs and their cultural and conservation significance has only just begun, but it is clear that a vast number of these three types of ICCAs continue to be maintained in all four of the high Himalayan national parks.¹⁵ These local-scale ICCAs are typically well demarcated in customary law and practice by topographic features and other agreed boundaries.

Planning and practice in the Himalayan national parks since the 1970s suggests that ICCAs have often been ignored and that national park administrators have at times implemented policies, regulations, and practices which have undermined or conflicted with ICCAs. In some cases, ICCAs have had tacit approval or informal encouragement. This has been the case, for example, when some SNP wardens gave informal support for continuing Sharwa management of some community forests through customary village law, village assemblies, and village officials (Stevens 1993, 1997b; Stevens and Sherpa 1993). However, there have been no laws or DNPWC policies (including management plans or memoranda of understanding between the DNPWC and indigenous peoples) which ensure continuity in affirmation and respect for ICCAs.¹⁶ Due to this lack of formal recognition, how well ICCAs have been respected and supported has varied with each national park administrator. This has made them vulnerable to being ignored or over-ruled by administrators and to being undermined by new institutions promoted by the national parks or outside NGOs.

SHARWA ICCAs AND CONSERVATION STEWARDSHIP OF THE MOUNT EVEREST REGION

We have given protection to all of Khumbu. From our fathers' and grandfathers' times we have had CCA systems and they are necessary for the future. But we have to have authority, not just a CCA in name only - (Sharwa leader, 2008).

Despite lack of encouragement and respect, indigenous peoples continue to maintain ICCAs in the Himalayan national



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Figure 2

Part of eastern Khumbu in Sagarmatha National Park and Buffer Zone. The Sharwa village of Khumjung and its temple forest, both part of the Sagarmatha National Park Buffer Zone, are in the foreground. All other areas in the photograph, including the community forest in the lower right, are part of Sagarmatha National Park. The sacred mountain Chomolungma (Mount Everest/Sagarmatha) is on the left skyline; the prominent peak on the right is Ama Dablam.

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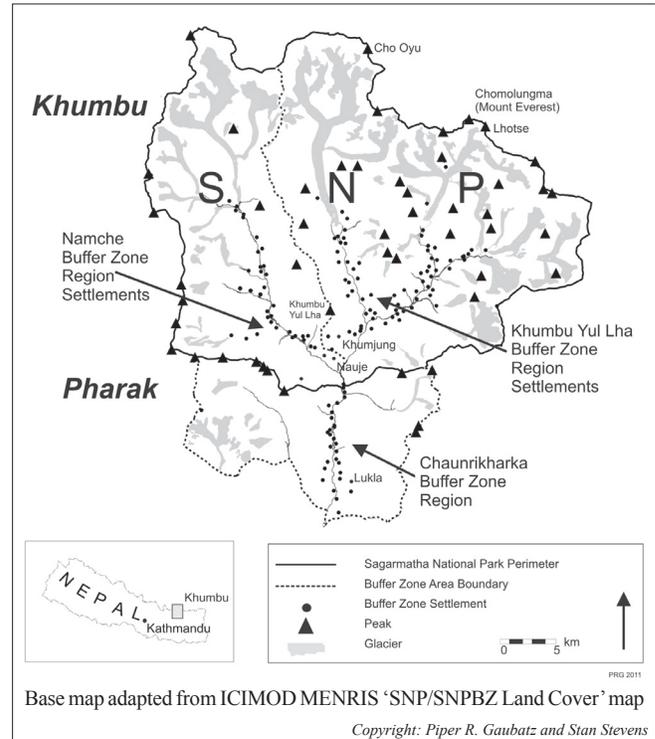
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Base map adapted from ICIMOD MENRIS 'SNP/SNPBZ Land Cover' map

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Figure 3

Sagarmatha National Park and Sagarmatha National Park Buffer Zone. Not all settlements are shown. The settlements within the perimeter of SNP are part of the SNP Buffer Zone and are not part of the national park.

resources was not restored. These commons continue to be intensely used. All households continue to rely on regional forests for timber, firewood, and other resources, and many families (although far fewer than in the past) continue to carry out transhumant herding of yaks, cattle, and yak-cattle crossbreeds. All of the valleys continue to be grazed up to the glaciers and high peaks and none of the herding settlements have been abandoned.

The Sharwa and other Himalayan and Tibetan Buddhists consider Khumbu one of the most sacred regions of Nepal because it is one of a small number of sacred, Himalayan hidden valleys (*beyul*). They believe that it was declared a sacred valley more than 1,200 years ago by Guru Rinpoche (Padmasambhava). According to Sharwa oral traditions, while he stayed in a now-sacred cave on the slope of the region's foremost sacred mountain, he converted its malevolent mountain god to be a benefactor of humans and defender of Buddhism. This mountain god, Khumbu Yul Lha, has since been the *yul lha*, the guardian god of the Khumbu region, with responsibility for caring for its people and livestock (Stevens 1993, 2008b; Sherpa 2003; Spoon and Sherpa 2008). Khumbu's status as a *beyul* is attested to in Tibetan religious texts, which date to as early as the fourteenth century (Wangmo 2005). The Khumbu *beyul*, as Sharwa today conceive it, encompasses all of what is administered as Sagarmatha National Park as well as the Pharak buffer zone region to the south (Figure 3).

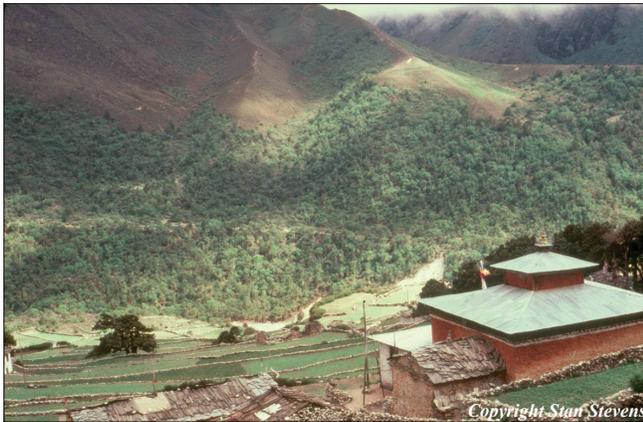


Figure 4

Pangboche village and temple in the Sagarmatha National Park Buffer Zone. The sacred Yarin lama's forest in Sagarmatha National Park, which has been protected by Pangboche village for four centuries, is in the background.

The Sharwa people conserve all of Khumbu as an ICT through their cultural values and customary law, including their belief that as a Buddhist people they have a responsibility to protect all life. In effect, Khumbu is a protected area which the Sharwa people have maintained as a strictly protected wildlife sanctuary for many generations. It is a basic tenet of their religion and sense of themselves as a people that they do not kill any form of life, including mammals, birds, fish, reptiles, and insects. Sharwa spiritual and cultural leaders, moreover, maintain that the Sharwa people have a responsibility to care for this region as a sacred place and to strictly adhere to tenets of non-violence in the *beyul*. One reflection of this is their thus far successful efforts to encourage Sharwa herders to forego retaliatory or defensive killing of snow leopards and common leopards despite the apparent increase in the number of these large predators in recent years and the considerable toll they have taken on local livestock.¹⁸

Khumbu is rich also in sacred mountains (among them Mount Everest, which is the sacred mountain Chomolungma for Sharwa and the home of the goddess Miyolangsangma) and in sacred forests, trees, springs, lakes, caves, and rock formations as well as Buddhist monasteries, temples, shrines, monuments, and cultural sites (Stevens 1993, 2008b; Spoon and Sherpa 2008). Many of the sacred natural and sacred cultural sites are cared for and respected in ways that have conservation significance and make them local ICCAs (Stevens 2008b). Sacred forests of multiple types are strictly protected (Figure 4) (Stevens 1993, 1997, 2008b). Their protection and care is the responsibility of particular temples, monasteries, or villages. The exceptional degree of protection commonly achieved is a testimony to shared faith, social solidarity, customary law, and social pressure. In some cases, village officials (*nawa*) who have responsibility for enforcing community forest regulations also watch over sacred forests.

There are also many customary local ICCAs which conserve livelihood commons. Since the early nineteenth century, Sharwa villages have managed use in extensive parts of the region's temperate grass/shrubland, forest, and alpine areas,

regulating transhumant pastoralism, multi-altitudinal crop production, and the cutting of hay (both wild grass and grass grown in walled hayfields) through a multi-zone system which closes and opens specific areas of customary village lands in altitudinal sequences. This agropastoral management system continues to be maintained in two of the three major valleys of Khumbu through governance by village assemblies and enforcement of rules by *nawa*, who levy fines on violators (Stevens 1993, 2008b).¹⁹ Some (but not all) villages also continue to manage community forests despite forest nationalisation in the 1950s and 1960s, and the subsequent assumption of forest administration authority by SNP. These villages regulate the felling of trees, the collection of deadwood for firewood, and grazing in their forests. Village assemblies establish regulations and choose *nawa* to enforce them.²⁰ Two villages also recently began regulating the gathering of fallen leaves and conifer needles for compost materials (Stevens 1993, 1997b, 2008b).

Traditional Sharwa community forest management and agropastoral management (Furer-Haimendorf 1964, 1975; Stevens 1993) have been celebrated in the ethnographic literature for nearly half a century as outstanding examples of effective commons management. They are village-governed and enforced systems implemented in customary village lands through a combination of customary law and recently adopted innovations which are informed by local ecological, agronomic, pastoral, and spiritual knowledge and belief. All village households have the opportunity to participate in decision-making by affirming and authorising revisions to village rules and regulations (*yul thim*) in an annual village assembly. In recent years (in contrast to some villages' past practices), all households also participate in enforcing the rules by taking turns as *nawa*. Although SNP management plans have never acknowledged these community forest and rangeland management practices, some SNP wardens have organised regional meetings of the *nawa* at national park headquarters to encourage them to enforce national park forest use regulations, and at times have arranged for them to receive a small salary (Stevens 1993, 1997b; Stevens and Sherpa 1993).²¹

There are also new ICCAs. Since 2002, the area in forest ICCAs has increased as a result of a Sharwa initiative to manage the collection of deadwood for firewood throughout the region rather than only in certain community forests. This is the first regional firewood collection management system in any of Nepal's Himalayan national parks. According to regulations and procedures developed by Sharwa leaders and authorised in village meetings, the old practice of unlimited, year-round deadwood collection has been replaced with a permit system administered by Khumbu buffer zone institutions (under SNP oversight) that limits households to collecting firewood in no more than two firewood gathering seasons per year (each of two weeks or less), imposes daily collection limits of one or two loads of firewood per household or hotel per day, and specifies which areas are open or closed for firewood gathering (some forests are now open annually to firewood collection, two are

open only every other year in a rotational system, and two have been closed for an extended period of years to allow them to recover from past intensive use). The permits are free, and are given to resident households by Khumbu buffer zone institutions. Khumbu buffer zone institutions decide which areas should be opened to dry wood gathering, or validate the requests of village assemblies in the several villages where these still convene. They also recommend whether or not there should be one or two firewood gathering seasons, again following the wishes of village assemblies. In some places *nawa* and buffer zone representatives check permits; elsewhere SNP staff or members of the army protection unit have taken on this responsibility. This system has the informal authorisation of SNP, and its operation is treated in detail in the advisory SNP/SNPBZ Internal Working Procedure (SNPBZ 2011). Although the system is not yet recognised in SNP management plans or in the draft SNP regulations developed by the DNPWC in 2007–2008, it is nonetheless a striking example of informal collaboration between Sharwa and SNP administration.²² The new rules have dramatically reduced firewood use by regional hotels as well as households. Overall firewood collection in SNP has declined by more than 75% since 2002, with greater alternative energy use replacing the use of firewood. Through these arrangements, all of Khumbu's forests are now being managed by Sharwa for the first time.²³

Another example of a new ICCA is the Lakyok Bird Conservation Area. This is an area on the slope of the sacred mountain Khumbila, which was partially fenced in 2008. It is protected by Khumjung village through village regulations banning firewood collection and stone quarrying in order to prevent disturbance of ground-nesting pheasants and other birds. Khumjung villagers sought and received permission to fence this area and to declare it a conserved area from the warden of SNP and pay a small salary to a villager to watch over it.

There are many challenges today to Sharwa conservation. Assimilation and globalisation pressures and associated regional cultural, social, and economic change have made maintaining Sharwa identity, knowledge, values, and practices increasingly difficult. Sharwa elders are alarmed at inter-generational cultural change, which is propelled in part by regional schools and Kathmandu boarding schools, which do not teach in the Sharwa language and ignore Sharwa culture and history. Lack of recognition and respect for Sharwa culture by government agencies and outside NGOs is another major issue. Increasing outside investment in tourism, monetarisation of the regional economy through participation in the tourism economy, and what many see as increasing materialism are also considered problems. Sharwa leaders are determined to ensure that Sharwa maintain long-term commitment to conservation stewardship responsibility for the Khumbu *beyul* and the continuing viability of their ICCAs, but they are well aware of the increasing challenges and threats. In particular, they have been quite concerned about the continuing inadequate respect for their ICCAs by SNP administrators and outside conservation and development organisations.

In recent years, Sharwa leaders have advocated reaffirmation and strengthening of Sharwa culture and Sharwa conservation stewardship of Khumbu through Sharwa initiatives and self-reliance. Among their goals—as expressed in community and Sharwa NGO meetings, in discussions among leaders, in national and international meetings on ICCAs, and in our extended conversations since 2008—are to:

1. *Reaffirm Sharwa identity and conservation stewardship* through cultural awareness and education campaigns—especially with youth—emphasising Buddhist conservation values, responsibility to care for the *beyul*, and ICCAs;
2. *Strengthen Sharwa conservation capability* by strengthening self-governance and self-determination, gaining greater respect for indigenous rights, ensuring greater Sharwa participation in regional decision-making on conservation and development issues, educating Sharwa youth in Sharwa culture including appreciation of ICCAs, and integrating new ideas, insights, science, and skills with indigenous knowledge and values to enhance Sharwa conservation stewardship of Khumbu;
3. *Strengthen Sharwa voice and participation in SNP governance* in order to participate fully and effectively in SNP planning, policy-making, and day-to-day management;
4. *Make respect for ICCAs integral to SNP policies and planning* including through their inclusion in the SNP management plan, SNP regulations, and national park zoning; and
5. *Make respect for Sharwa ICCAs integral to the operations of outside NGOs in Khumbu* by establishing Sharwa authorisation and supervision of their programmes to ensure that they do not undermine or ignore ICCAs or other aspects of Sharwa culture and self-governance.

Sharwa leaders are pursuing these goals through their own initiative, by seeking support from national and international allies, and through continuing dialogue and negotiation with government agencies and officials. They are particularly concerned about their relationship with DNPWC and SNP officials. Unequal power relationships and lack of mutual understanding and respect grounded in inter-ethnic, class, and technocratic/bureaucratic attitudes make dialogue difficult. So, too, does a history of distrust, grievance, tension, and conflict. In the 1970s, Sharwa strongly opposed the establishment of the national park (Hillary 1982, Stevens 1993; 1997b; Stevens and Sherpa 1993). Today, many support the idea of the national park and want stronger coordination and cooperation between park management and their culturally-based conservation stewardship of Khumbu. Many leaders feel, however, that the DNPWC and SNP have inadequately sought Sharwa consent and participation in SNP governance, insufficiently shared benefits, and failed to respect their culture, self-determination, and rights.

One aspect of these concerns is what Sharwa leaders perceive to be a history of insufficient respect for their ICCAs in park governance, planning, and policies. They see no indication of a shift in attitude or policies in the *SNP Management and Tourism Plan, 2007–2012*, or the 2007–2008 draft SNP regulations. While leaders are encouraged to find that some of

the management plan's provisions reflect their concerns and ideas on other issues, it does not acknowledge their customary land management institutions and practices. While the degree of local consultation in developing the plan was greater than in earlier planning, Sharwa leaders and institutions did not co-author or authorise the plan. There is also concern about whether the DNPWC will implement some provisions that Sharwa leaders favour. They were upset, for example, to learn in 2008 that the draft SNP regulations developed by the DNPWC without their full and effective participation had failed to include a provision for a national park advisory committee even though it had been recommended in the management plan. This provision was added to a subsequent draft only after Sharwa leaders complained directly to the director-general of the DNPWC. Both the management plan and the draft regulations, moreover, continue to be silent about ICCAs, the significance for national park governance and management of the status of the Sharwa people as an indigenous people, or issues of the Sharwa people's rights to territory, collective land tenure, self-governance through customary institutions, customary natural resource use and management, and cultural integrity.

RAISING AWARENESS OF AND APPRECIATION FOR SHARWA ICCAs

In recent years, Sharwa leaders have found the concept of ICCAs to be of great interest as it provides them with a way of thinking about regional conservation that embraces the diversity of their different local community practices and the underlying importance to them of cultural values associated with their Buddhist faith, belief in Khumbu as a *beyul*, and traditions of community solidarity and stewardship of livelihood commons. Leaders first learned about ICCAs when a contingent of leaders participated in an IUCN/DNPWC protected area governance workshop in January 2008 at which ICCAs were emphasised. This experience sparked informal discussions among them over several months about how they could strengthen their ICCAs and gain greater recognition and respect for them by SNP and outside conservation NGOs. Several prominent Khumbu Sharwa leaders ultimately decided to convene an informal gathering of leaders from throughout Khumbu to discuss Sharwa ICCAs. On May 25, 2008, 28 leaders gathered in Khumjung village to discuss their ICCAs, and endorsed a resolution through which they reaffirmed their personal commitment to Khumbu Sharwa ICCAs and to the idea that all of Khumbu is an ICCA which they referred to as the Khumbu Community Conserved Area (KCCA) (Figure 5).²⁴ This affirmation was shared with SNP, DNPWC, and international conservation organisations.

This action, unfortunately, sparked a strong backlash from the DNPWC and SNP. The director-general of the DNPWC initiated an investigation. Key leaders maintain that they were required by the warden of SNP to explain their action in writing, were told by him that what they had done was "illegal", and were pressured to retract their declaration and to apologise



Copyright: Sonam Hishi Sherpa

Figure 5

Discussion of Sharwa ICCAs, Khumjung, 2008

for having made it. A prominent Sharwa leader subsequently "withdrew" the "declaration" of the KCCA, while insisting that there was no need to do so because the KCCA was a concept that did not create any new institutions or practices and which did not conflict with SNP. He reports that he refused a further demand by the SNP warden that he call a meeting of Sharwa leaders to formally apologise for their "illegal" declaration, maintaining that they had done nothing wrong or illegal for which they should apologise.

Meanwhile, major national newspapers incorrectly reported that Sharwa had illegally declared a conservation area to replace SNP and attributed this to the influence of foreign conservationists. The director-general of the DNPWC was reported as calling for strong measures against those responsible. Shocked by what they saw as misrepresentations and disrespect, eighteen Sharwa leaders sent a letter to the director-general in which they took responsibility for and defended their action and intentions, clarified the importance of their conservation contributions to SNP, took issue with statements attributed to him in press reports, and indicated that unless he desisted from making such statements they would be compelled to launch an agitation campaign to inform and educate the general public. The director-general also received a letter from the co-leaders of IUCN's inter-commission thematic group TILCEPA, which has led in advocating and supporting ICCAs within IUCN.²⁵ This letter clarified the ICCA concept, underscored the conservation intent and commitment of the Sharwa initiative, and encouraged him to take the opportunity to initiate a constructive dialogue. The brief public controversy quickly faded, unfortunately without any retraction of inaccuracies in newspaper reports, positive reporting on Sharwa conservation efforts in SNP, or any immediate new dialogue between DNPWC officials and Sharwa leaders. Discussions in 2011 between the SNP warden and Sharwa leaders and the subsequent acknowledgement of the value of Sharwa conservation contributions in the Internal Working

Procedure (2011) may be a beginning of a reconciliation and new collaboration.

Over the past four years, Sharwa leaders have worked to raise awareness of their ICCAs and to strengthen them. This has involved local, national, and international actions. At the local level, a new NGO was established in 2010, the Khumbu Sherpa Culture Conservation Society, which will undertake a range of activities in support of ICCAs and other aspects of Sharwa culture, including documentation, participatory mapping, community and school programmes, cultural camps, publications, and participation in national and international meetings and workshops. At the national and South Asian regional level, Sharwa leaders have been prominent in ICCA dialogue meetings and workshops organised by Kathmandu-based ForestAction Nepal and by the Indian NGO Kalpavriksh. Discussions during these meetings led to the June 2010 creation of a national organisation, ICCA Network Nepal. Tenzing Tashi Sherpa, a Khumbu Sharwa cultural and conservation leader, was chosen to be the first co-ordinator of the new organisation. The ICCA Network Nepal has since been named a member organisation of the ICCA Consortium, a global association of indigenous peoples' and community organisations and NGOs which promotes appropriate ICCA recognition and support. ICCA Network Nepal members now seek to establish a legally-recognised federation that will function as a learning network and support organisation for ICCAs throughout Nepal as well as to advocate and lobby for legal and other appropriate ICCA recognition.

Sharwa leaders also have participated in international meetings and workshops where they have discussed their ICCAs and the ICCA Network Nepal, including IUCN's IVth World Conservation Congress in Barcelona, Spain, in 2008, the 10th Conference of the Parties to the Convention on Biological Diversity in Nagoya, Japan, in 2010, and a three day ICCA Consortium-organised workshop in the World Heritage Site village of Shirakawa-Go, Japan, in 2010. Sharwa ICCAs have become widely known and appreciated in international conservation circles and are featured in several recent IUCN publications (Borrini-Feyerabend 2008b, 2010a; Borrini-Feyerabend et al. 2013). Sharwa leaders hope that international visibility and networks will provide important support for their continuing efforts to maintain and strengthen their ICCAs and to gain appropriate recognition and respect for them. Some leaders feel that international visibility and support will be critical.

Sharwa leaders also continue to reach out to the Nepal government for recognition. In December 2009, Sharwa leaders petitioned the prime minister of Nepal to recognise that Khumbu is an ICCA on the occasion of his first visit to Khumbu. Although they did not receive a reply, the issue of ICCA recognition and respect will be raised with regard to revision of the proposed DNPWC SNP regulations, the upcoming review and revision of the SNP management plan, and other occasions for dialogue and negotiation with the DNPWC and Nepal government.

CONCLUSION: THE UNCERTAIN FUTURE OF ICCA RECOGNITION IN NEPAL'S HIMALAYAN NATIONAL PARKS

Achieving greater appreciation of ICCAs in Nepal may be difficult (Paudel et al. 2011). Here—as in many other states—opposition to ICCAs occurs within a larger political ecological context of relationships, institutions, and practices which creates barriers to respect for indigenous peoples and rights. Refusal to acknowledge the value of ICCAs often reflects not only lack of appreciation of indigenous peoples' conservation achievements by state officials, national conservation NGOs, and conservation and natural resource management 'experts', but also the marginal social and political status of indigenous peoples, lack of legal recognition of indigenous rights, and reluctance to honour international commitments and national law that affirms those rights. There is a strong possibility that the Nepal state will not soon implement effective recognition of collective land tenure, customary law, and customary institutions for natural resource management even though it has an obligation to do so as a signatory to ILO 169. State officials, moreover, may well continue to insist that national parks cannot be ICCAs and that ICCAs cannot be recognised within national parks. Alternatively, the state may decide to recognise as ICCAs only state-designed, standardised institutions such as those already created for buffer zones, conservation areas, and community forests. This could obstruct appropriate recognition of existing ICCAs grounded in indigenous peoples' cultures and initiative, undermine their effectiveness, and even precipitate their abandonment. For many years, relationships and interactions between state agencies and officials and indigenous peoples have been entrenched in ways that reflect an enormous, continuing power differential and the persistence of attitudes and discourses which demonstrate officials' lack of appreciation of the new protected area paradigm, reluctance to share power, and refusal to acknowledge that the "local inhabitants" of the Himalayan national parks are indigenous peoples with indigenous rights. It will be a challenge to change these attitudes and relationships.

This does not mean, however, that government officials are simply bound to past and prevailing structures, relationships, and practices. Much can be done by progressive MFSC and DNPWC officials to use their authority even within current law to give greater respect and support to ICCAs and more generally to remake relationships and interactions with indigenous peoples in the high Himalayan national parks. There is also the possibility that future national social and political change may yet reshape the relationships between the state and indigenous peoples in Nepal in ways that will transform existing political ecologies of conservation. The new constitution may include strong indigenous rights provisions and clarify that these apply in protected areas. New national laws may be adopted to implement those constitutional rights and meet the requirements of honouring ILO 169 and the standards of UNDRIP. Such new laws and associated policies and regulations may recognise ICCAs—including indigenous

peoples' governance of national parks as ICCAs as well as their continuing administration of ICCAs as zones within national parks. Recognition and support for ICCAs might also be strengthened by laws and policies that require indigenous peoples' governance or shared governance of all protected areas established in the customary territories of indigenous peoples. Other national laws and DNPWC policies could also strengthen recognition, respect, and support for ICCAs without specifically referring to them, including initiatives which recognise indigenous peoples' territories, collective land tenure, and customary law; reconstitute nationalised lands; ensure their custodianship of sacred natural sites; and secure their governance, management, and use of lands and waters. Enactment of such laws and policies and their effective implementation will depend on the outcome of the political struggle now underway in Nepal to redefine the status of indigenous peoples and whether Nepal's indigenous peoples' movement makes a priority of promoting rights recognition and rights-based conservation in protected areas.

Despite considerable challenges, indigenous peoples living within Nepal's high Himalayan national parks continue to maintain customary ICCAs, and in some places have developed new ones. These ICCAs make important contributions to the achievements of those protected areas' goals and are vital to maintaining indigenous peoples' cultures, sustainable livelihoods, social solidarity, and responsibilities for caring for their territories and sacred places. Appropriately recognising, respecting, and coordinating with these ICCAs should be a priority for Nepal's national conservation planning and programmes and for the government of Nepal's fulfillment of its international obligations under ILO 169 and the CBD. This will also be critical for Nepal to meet IUCN standards and guidelines for ICCA recognition and for the governance and management of protected areas established in indigenous peoples' territories. It will be difficult for Nepal to reverse long-established inter-ethnic and governmental relationships which have dispossessed and marginalised indigenous peoples and insufficiently respected their knowledge, institutions, conservation contributions, and human rights in national parks. The appropriate recognition of ICCAs within the high Himalayan national parks will be a key measure of Nepal's commitment to protected areas which are based on respect, rights recognition, and reconciliation. This may yet lead to national park governance and management which honour and affirm indigenous peoples' cultures, self-governance, and their conservation stewardship of their lands through ICCAs.

Notes

1. As interpreted in international law, treaties, and rights instruments (including ILO Convention 169 on Indigenous and Tribal Peoples and the UN Declaration on the Rights of Indigenous Peoples) the "traditional territories" or "customary territories" of indigenous peoples encompass the areas they inhabit, seasonally inhabit, or use. Use includes cultural associations, including spiritual ones. ILO 169 (Article 13.2) defines territory as "the total environment of the areas which the [indigenous] peoples concerned occupy or otherwise use." James Anaya, the UN Special Rapporteur on the Rights of Indigenous

- Peoples, considers territory "to include not just areas of contemporary physical use, but also ancestral or traditional use that continues to have significance in the contemporary life of the community, including within cultural and religious domains. Indigenous peoples' autonomy over particular subjects of local or internal concern, along with their participation in wider decision-making, should, together, extend to matters throughout their respective territories in ways commensurate with the exercise of their rights to political participation, cultural integrity, and social and economic development" (Anaya 2009: Paragraph 69).
2. Discussion is ongoing in indigenous peoples' and international conservation circles of the differences between the concepts of ICCAs and ICTs and the appropriate use of each term. The term ICCA is certainly broader in that it can be applied to the conservation practices of local communities as well as indigenous peoples and is appropriate for any size of area or region. As a result it is now often used as an umbrella term which includes ICTs.
 3. The indigenous people of the Mount Everest region call themselves Sharwa. They became internationally known as the Sherpa after British mountaineers began using that name for them in the early twentieth century. Chomolungma is the Sharwa and Tibetan name for Mount Everest. The official name for the national park refers only to the Nepalese name for the mountain.
 4. Indigenous rights proponents contest the relatively recent practice of referring to the language of the conquerors who created the kingdom of Nepal as 'Nepali' and promoting it as the national language.
 5. In Nepal, a 'conservation area' is a type of protected area declared by the national government.
 6. 'Rai' is an ethnic category used by the Nepal government for as many as 20 peoples in eastern Nepal who seek recognition as separate indigenous peoples.
 7. When buffer zone community forest user groups self-govern forests, these community forests can be considered to be new ICCAs. Administration of the buffer zones as a whole, however, is at best shared governance through a buffer zone management committee which includes the warden of the national park and a representative of the district government as well as the elected representatives of the regional buffer zone institutions. In practice, the warden can have considerable influence over decisions and he also controls the allocation of funds. Some residents of buffer zone settlements complain that the supposedly shared governance of buffer zones by the DNPWC and resident communities has in effect extended the authority of national park officials over their communities and lands.
 8. National park wardens, staff, and members of the national park army protection units have been accused of unlawful violence and lack of due process in enforcing national park regulations (Stevens 1993, 1997b; Campbell 2005; Jana 2008; Paudel 2008; Anaya 2009). Although he notes that the DNPWC disputes these allegations, the UN Special Rapporteur found such charges sufficiently credible to merit investigation with regard to Chitwan National Park cases that had been brought to his attention (Anaya 2009).
 9. The warden of a national park or wildlife reserve is also referred to officially as the 'Chief Conservation Officer'.
 10. According to Paragraph 16c (1) of the National Parks and Wildlife Conservation, Act "the Warden, in coordination with local authorities may form a user committee for the management of fallen trees, dry wood, firewood and grass in a National Park, Reserve, Conservation Area or Buffer Zone." Little or no use has been made until recently of this provision in the Himalayan national parks. Since 2002, however, Sagarmatha National Park authorities informally have delegated some management authority for dry wood collection to buffer zone user groups and buffer zone user committees within the national park (Stevens 2008).
 11. SNP once had a Sharwa advisory committee, but it was discontinued in the early 1980s (Stevens 1993, 1997b). The current national park management plan (MFSC 2007) recommends reestablishing an advisory committee, but the DNPWC has not yet done so.
 12. Three Sharwa formerly served as wardens in several Himalayan national parks. All three were educated in New Zealand as part of the assistance that country offered to Nepal in the late 1970s and early 1980s to establish SNP (Stevens 1993). Sharwa served as wardens and assistant wardens in SNP during much of the 1980s and 1990s, but no

- Sharwa has been posted to these positions since 2002.
13. In this article I focus on the Himalayan national parks. See Stevens 2008a and Jana and Paudel 2010 for discussion of ICCAs in Nepal more generally.
 14. Two of Nepal's high Himalayan conservation areas, Gaurishankar Conservation Area and Manaslu Conservation Area, also include *beyuls*. Both are the customary territories of indigenous peoples.
 15. On these customary ICCAs, see Stevens 1993, 2008; and Sherpa 2003 for Sagarmatha National Park; Aumeeruddy-Thomas et al. 2004; Ghimire and Parajuli 2001; and Bauer 2004 for Shey-Phoksundo National Park; Fox et al. 1996; Baker 2004; and Campbell 2005 for Langtang National Park; and Diemberger 1997; and Crockett et al. 1999 for Makalu-Barun National Park.
 16. The Sharwa members of the SNP/BZ Management Committee and the SNP warden agreed on an advisory Internal Working Procedure (2011) which acknowledges the importance of Sharwa conservation contributions to SNP, declares the conservation of Sharwa culture to be a national park goal, and affirms the roles of the village officials (*nawa*) and local buffer zone institutions in national park forest management. While an important step, the document is non-binding and omits much, including any reference to the Khumbu *beyul*, ICCAs, Sharwa sacred forests, collective governance of grazing, protection of wildlife, the Mount Everest region as a Sharwa customary territory, human rights, or the rights of indigenous peoples.
 17. The boundaries of the Sharwa territory of Khumbu are clearly delineated by topographic features which have been recognised by the Nepal government for two hundred years (Regmi 1975; Stevens 1993). These cultural, social, and political conceptualisations of Khumbu are embodied in current local administrative boundaries. The many distinct, local Sharwa ICCAs (including sacred natural sites, community forests, and community-managed rangelands) within Khumbu are also clearly defined and delineated on the basis of topographic and other features.
 18. In the past, Sharwa killed predators as an exception to their otherwise universal respect for life. This led to the regional extirpation of wolves in Khumbu in the 1980s and what may have been the temporary extirpation of snow leopards (Stevens 1993, 1997b). The significance of this historical suppression of large predators (and the recent recovery of snow leopards and the movement of common leopards into Khumbu) for populations of Himalayan tahr, musk deer, and other wildlife is not clear. Grazing and forest use related to Sharwa land use and tourism development may also have affected wildlife numbers and ranges.
 19. Community management of rotational grazing was abandoned in the 1980s in the westernmost valley of Khumbu, in large part in response to regional agropastoral change rather than because of SNP policies (Stevens 1993).
 20. Formerly, some villages chose two sets of *nawa*, with *shinggi nawa* responsible for enforcing forest regulations and *lotok nawa* responsible for enforcing agropastoral regulations. During the past decade, all but one village has decided to have a single set of *nawa* who have responsibility for all of these duties. Various village assemblies have made changes also in the number of *nawa*, the procedures for their selection, the land use regulations they enforce, and the boundaries of management zones. These changes testify to adaptability, resilience, and continuing community commitment to conservation.
 21. *Nawa* can be paid a small monthly salary by SNP and the SNP/BZ under the terms of the Internal Working Procedure (2011), with the funding coming from the 30–50% proportion of SNP tourist entrance fees that is allocated to the operations of the SNP Buffer Zone. This proposal is controversial, however. For several years, the SNP/BZ has been paying these village officials a performance-based bonus based on the recommendation of their villages. Some leaders prefer this be a bonus rather than a salary from SNP or SNP/BZ because they are concerned with the possible erosion of the village assemblies' customary authority over the *nawa*.
 22. The draft SNP regulations, which have not yet been adopted by the Ministry of Forests and Soil Conservation, do not mention this decade-old arrangement. The SNP/SNP/BZ Internal Working Procedure (2011), which is an informal agreement between an SNP warden and members of the SNP Buffer Zone Management Committee (BZMC), does, however, outline understandings of how

SNP forest governance and management is to be coordinated by SNP and the buffer zone institutions in the village enclaves within the national park. The agreement also recognises the existence of the *nawa* and their role in conservation of community forests. In effect the arrangement devolves considerable authority to local institutions while maintaining SNP's legal oversight authority. It arguably constitutes informal SNP recognition of Sharwa forest management ICCAs without mentioning the word ICCA. This recognition, however, is weak. It is far from certain how much weight the Internal Working Procedure will be given by future SNP wardens or BZMCs. Whether the present arrangement will be maintained over time and under different DNPWC, SNP, BZMC leadership is far from certain. Sharwa leaders also have noted that the current procedure does not sufficiently acknowledge the authority and role of village assemblies or make clear that these choose and direct the *nawa*.

23. In earlier eras, not all of Khumbu's forests were governed and managed as community forests or sacred forests (Stevens 1993). The current system, while improving regional forest conservation, has been a hardship for poorer households and for residents of settlements which have little access to alternative energy. The social and conservation ramifications of this important change merit further research and evaluation.
24. In early 2008, Sharwa leaders represented their conservation stewardship in Khumbu as a 'Community Conserved Area' (CCA) rather than as an ICCA because the term ICCA had not yet come into international use.
25. TILCEPA, formerly the Theme on Indigenous Peoples, Local Communities, and Equity in Relation to Protected Areas, is now the Strategic Direction on Governance, Communities, Equity and Livelihood Rights in Relation to Protected Areas.

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