

A Study to Assess the Situation of Environmental Rights Defenders/Activists in Nepal

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For Human Rights and Social Justice

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ACRONYMS

CSO	:	Civil Society Organizations
DFO	:	District Forest Officer
EIA	:	Environmental Impact Assessment
EHRD	:	Environmental Human Rights Defenders
FECOFUN	:	Federation of Community Forest Users, Nepal
HRC	:	Human Rights Council
HRD	:	Human Rights Defender
INGO	:	International Nongovernmental Organizations
INSEC	:	Informal Service Sector Centre
KII	:	Key Informant Interview
MWT	:	Mithila Wildlife Trust
NGO	:	Nongovernmental Organizations
OHCHR	:	UN Office of the High Commissioner
Para	:	Paragraph
p.	:	page
RES	:	Resolution
UN	:	United Nations
UNEP	:	United Nations Environment Programme
UNGA	:	United Nations General Assembly

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EXECUTIVE SUMMARY

A. INTRODUCTION AND RATIONALE OF THE RESEARCH

Environmental defenders are at the forefront of environmental protection, holding governments and businesses accountable for environmental harm and upholding the rights of those most affected by environmental degradation. Although Nepal has played a pivotal role in the protection of the environment and has achieved monumental progress in the protection of community forests and biodiversity, discussions and policies for the protection of people defending the environment are lacking.

The International Service for Human Rights and the Informal Sector Service Centre (INSEC) presented a joint statement in the 47th session of the Human Rights Council highlighting the increasing trend of HRDs' human rights violations. The statement made in 2021 A.D. highlights 280 cases of HRDs' rights being violated or abused in the past two years. The state has violated 78 HRDs' rights, including 17 HRDs beaten, 7 treated inhumanly, 7 discriminated against based on their caste, and 8 threatened during the period of 2019 and 2020. 202 of these cases involved violations by non-state actors. Human Rights defenders in Nepal have repeatedly asked for constitutional recognition, fulfillment of international obligations, and the formulation of policies on the protection of human rights defenders in line with the Supreme Court of Nepal's decision on environmental rights, among others. According to UNEP, Environmental defenders remain highly vulnerable and under attack across the globe. Worldwide, environmental defenders face growing assaults and murders in conjunction with increasing intimidation, harassment, stigmatization, and criminalization. However, there are no specific numbers or documentation in Nepal to date that stipulates the situation of EHRDs. This research is aimed at identifying people working as defenders of environmental rights and documenting their situations and problems.

B. LEGAL FRAMEWORK ON EHRDs

On July 28, 2022, the United Nations General Assembly recognized that a clean, healthy, and sustainable environment is a universal human right. At its 40th session, the Human Rights Council adopted a first-of-its-kind resolution recognizing the importance of environmental human rights defenders and their protection. Besides access to rights and underscoring the positive impacts of EHRDs for society as a whole, the Human Rights Council resolution also addressed another important related issue: the environment of impunity for those who threaten human rights defenders. Despite many international milestones in framing legislation for the protection of HRDs, Nepal does not have specific legislation devoted to EHRDs or HRDs. The Nepalese legislation on environmental protection does not define or stipulate about EHRDs. While the act has strictly defined defiance of the provisions of the Forest Act, 2019, as punishable, it fails to amplify the protection measures of EHRDs. The protection measures are limited to punishing the one who obstructs while discharging duties and ‘shooting the offender under the knee’ who is involved in forest and wildlife-related offenses. Likewise, the Environmental Protection Act, 2019, introduced novel issues such as climate change mitigation but failed to comprehend the protection of local people who speak for the rights of a clean environment.

C. METHODOLOGY

The research adopts two approaches: an empirical study and a descriptive study. The universe for the research includes all environmental human rights defenders where the SAMRAKSHAN’ project is being implemented. The 51 stakeholders identified from the three provinces- Sudurpashchim, Lumbini, and Madhesh were the sample size of the research. To collect data, the tools of data collection for this research included questionnaire, key informant interviews, and focused group discussion. The list of questions on the questionnaire was structured, whereas for KII it was semi-structured. The questions comprise both close-ended and open-ended questions. Most of the KII was performed through a *one-on-one* interview. Some interviews were conducted through telephone conversations. The purposive and snowball sampling techniques

were used for identifying interviewees and stakeholders in three provinces. These sampling techniques were used to identify environmental defenders working in the sector of environmental protection. The criteria for identifying EHRDs was the definition adopted by UNGA in 2016. For secondary data collection, books, research articles, and reports published by INGOs, NGOs, the United Nations, expert groups, and academic institutions were taken into consideration.

D. FINDINGS

Self-Recognition as EHRDs:

Interviewees do not identify themselves as “Environmental Human Rights Defenders” per se. Most of the respondents agreed with their lack of knowledge about their roles as EHRDs as outlined by the United Nations. According to them, the pertinent lack of self-knowledge is because of a lack of consultations and policy-level discussions on their role, and thus, they are unaware of their role.

Recognition by the community:

Most of them complained that EHRDs who are working for the conservation of the environment are yet to be valued within their community. EHRDs are yet to be identified distinctly as “EHRDs” in Nepal. People are not aware of the role of EHRDs, and very few are wary of their importance. They are oblivious to the essential role EHRDs play and, thus, do not see the work of EHRDs with respect.

Experiences of activism:

The environmental activists see their role as a ‘service’ to the community. All the activists interviewed were highly motivated to protect the environment despite the hurdles, not just for themselves but also for the sake of upcoming generations. Environmental activists describe their role as 24 hours and 7 days of work to preserve their surroundings. These activists have experience working in coordination with the local community on issues of protection and utilization of local resources.

Challenges:

All of the interviewees who work for the protection of the environment feel unsafe while working. It is so because of the lack of sense of security from the government. Lack of awareness about the role and need of EHRDs is one of the main challenges. People are unaware of the long-lasting impacts of an unsustainable environment. When many people are insensitive towards the environment itself, there is no scope for people to understand the importance of EHRDs. No legislation, policy, or plan defines EHRDs. No legislation recognizes people who have been working in the sector of environmental justice. There is no research, documentation, or segregation of people working as EHRDs yet. No legislation comprehends the difficulties faced by EHRDs and provides protection measures. Environmental activism for many locals and community leaders is an unpaid, 24/7 service. Because of the lack of financial security, many interviewees explained that despite their willingness to work all day for the protection of the environment, they could not. Most of the stakeholders shared the ineffectiveness of all three levels of government to solve issues raised by EHRDs regarding their safety and environmental protection. To date, there is no network displaying the collective voices of EHRDs. All the interviewees stressed the need for a common platform to raise common issues about EHRDs. The areas where EHRDs work are highly under resourced. Activists have no identity cards, weapons, dresses, or combat training for their safety. The forests are not well barred, which results in security risks for EHRDs.

Successful intervention stories:

EHRDs and their organizations have worked in close coordination with the local government to implement successful and impactful projects in plantation, cleanliness, and waste management in all three provinces. The CSOs interviewed shared their success stories of establishing climate adaptation villages, coordinating with the local government to buy machinery for waste management, buying safety gear for workers who collect household waste, etc. All the interviewees mentioned that their work would be more effective if the government and concerned stakeholders took active measures to mitigate their challenges.

Access to justice and remedies available:

Many interviewees shared a lack of response from the police in cases of emergency during the night, especially when there is confrontation with the smugglers. According to the respondents, the concept of community forest undoubtedly puts the community in charge of the control and monitoring of the forests along with their utilization, with the police and other governmental organizations such as DFO equally responsible for the protection of these leaders as well as community activists. However, many community activists complain about the inability of these authorities to act promptly when EHRDs are in danger. In addition, EHRDs do not feel that they have access to remedies.

Knowledge about international standards and the need for national standards:

Many interviewers expressed complete unawareness about the existing norms, legislation, and declarations on the protection of EHRDs. The stakeholders were aware of the new Nepalese legislation on environmental protection. Most of the interviewees highlighted the need for separate legislation for the protection of HRDs and EHRDs, respectively.

E. CONCLUSION AND RECOMMENDATIONS

CONCLUSION

1. No legislation, policy, or plan defines EHRDs. No legislation recognizes people who have been working in the sector of environmental justice. There is no research, documentation, or segregation of people working as EHRDs yet.
2. Many activists working for environmental protection do not recognize themselves as defenders of environmental rights because of their lack of awareness of this issue.
3. The government, family, and society lack recognition of EHRDs. People are not aware of the role of EHRDs, and very few are wary of their importance. They are oblivious to the essential role EHRDs play and, thus, do not see the work of EHRDs with respect.

4. The lack of incentives propagates a lack of recognition. Since this is an unpaid service to the community with no monetary inducements, EHRDs have a hard time explaining their role to their families.
5. People working for the protection of the environment do not feel protected by the state. They face constant threats from wood smugglers, thieves, and local people who do not get to use the woods of the forest as per their convenience.
6. EHRDs are unable to devote their whole time to environmental preservation due to a lack of financial incentives, insurance plans, and social security programs.
7. Most of the stakeholders shared the ineffectiveness of all three levels of government to solve issues raised by them on environmental protection and regarding their (EHRDs) protection due to miscoordination among these three levels of government.
8. To date, there is no network focused on the collective voices of EHRDs. All the interviewees stressed the need for a common platform to raise common issues about EHRDs.
9. Despite the hardships, EHRDs have achieved monumental achievements. They have worked to raise awareness within the local communities about deforestation, endangered plants and animals, indigenous use of local resources, and the rights and duties of the local community towards the environment, among others. Yet these achievements remain concealed because of a lack of recognition.
10. The new laws on environmental protection fail to comprehend the protection of defenders of the environment.
11. The judicial activism and activism through PIL resulted in new legislation concerning the environment- The Environment Protection Act, 2019, and the Forest Act, 2019. The court is yet to orate on the issues of EHRDs and HRDs because of a lack of public interest litigation on the issues of their protection.

RECOMMENDATIONS

a. Recommendations to the Government of Nepal

It is recommended that the Government of Nepal:

- Initiate policy level discussions with EHRDs to formulate

legislation, programs, and policies apt for the betterment of EHRDs at all levels of government.

- ▶ Frame and implement awareness programs to inform people about the role and need of EHRDs in the community through the Ministry of Forest and Environment in coordination with the concerned local government.
- ▶ Coordinate with CSOs and community leaders to create a common platform for EHRDs at all three levels of government.
- ▶ Provide physical combat training and self-defense training to people who are working on the ground level to protect the environment and forest under the leadership of local government authorities.
- ▶ Develop mechanisms to identify EHRDs and provide identity cards.
- ▶ Initiate social security and employment schemes for EHRDs.
- ▶ Create well-developed infrastructure and adequate human resources in government offices to deal with the constant threats faced by EHRDs from wildlife, wood smugglers, etc.
- ▶ Create an environment for dialogue and discussion through coordination among national and province governments, National Human Rights Commission, and local governments to approve the Draft Bill on the protection of human rights defenders prepared by INSEC.

b. Recommendations to local community leaders

It is recommended that the local community leaders:

- ▶ Raise awareness about the existing international and national norms for EHRDs.
- ▶ Organize capacity-building programs in coordination with the local government to empower people in the community about need and role of EHRDs.
- ▶ Coordinate with local level government to initiate plans and schemes for the protection of EHRDs.

c. Recommendation to CSOs

It is recommended that the CSOs:

- ▶ Build a network and a common platform for EHRDs.
- ▶ Develop awareness campaigns, evidence based advocacy plans, and capacity building programs to aware people on their role as EHRDs.
- ▶ Raise awareness about the need of EHRDs in the community.
- ▶ Build, train, and empower youths who can further their work on environmental protection- build new groups of EHRDs.
- ▶ Discuss and negotiate the need for separate legislation for EHRDs while in discussion with various levels of government.
- ▶ Work in close coordination with three levels of government to address unique challenges of EHRDs in their respective provinces.

CHAPTER I

INTRODUCTION

1.1 BACKGROUND

The UNGA defines Environmental Human Rights Defenders [EHRDs] as “individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora, and fauna”.¹ Environmental defenders are at the forefront of environmental protection, holding governments and businesses accountable for environmental harm and upholding the rights of those most affected by environmental degradation. Although Nepal has played a pivotal role in protection of the environment and has achieved monumental progress in the protection of community forests and biodiversity, discussions and policies for the protection of people defending the environment is at miss. This research aimed at identifying people working as defenders of environmental rights and documenting their situations and problems.

1.2 RATIONALE AND CONTEXT OF THE RESEARCH

Many Nepalese individuals have been proactively working on the issues of climate change², air pollution,³ climate change education,⁴ green discussion,⁵ amongst others. This research is a baseline study of the

- 1 UNGA, Situation of human rights defenders, A/71/281, 3 August 2016, pg. 4, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/247/09/PDF/N1624709.pdf?OpenElement>, accessed on 13 August 2022.
- 2 Nepali Times, Nepali climate activist makes waves, 30 July 2021, available at <https://www.nepalitimes.com/latest/nepali-climate-activist-makes-waves/>, accessed on 5 December 2022.
- 3 UNESCO, #KindnessMatters: Young Environmentalist, Dipika Badal, Helps Create Policy Change in Nepal, *Project Pahal*, available at <https://mgiep.unesco.org/article/young-environmentalist-dipika-badal-helps-create-policy-change-in-nepal>, accessed on 1 December 2022
- 4 Nepali Times, Women moving Nepal's climate activism, 3 March 2021, available at <https://www.nepalitimes.com/banner/women-moving-nepals-climate-activism/>, available at 4 December, 2022.
- 5 Nepalese Youth for Climate Action, available at <https://nyca.net.np/campaign-and-activities.html>, accessed on 13 December 2022.

condition of EHRDs, their challenges, their successful interventions, and their expectations from the government.

The International Service for Human Rights and the Informal Sector Service Centre (INSEC) presented a joint statement in the 47th session of the Human Rights Council, highlighting the increasing trend of HRDs' human rights violations. The statement made in 2021 A.D. highlights 280 cases of HRDs' rights being violated or abused in the past two years. The State has violated 78 HRDs' rights, including 17 HRDs beaten, 7 treated inhumanly, 7 discriminated against based on their caste, and 8 threatened during the period of 2019 and 2020. 202 of these cases involved violations by non-state actors.⁶ Human Rights defenders in Nepal have repeatedly asked for ensuring constitutional recognition, fulfilment of international obligations, and the formulation of policies on the protection of human rights defenders in line with the Supreme Court of Nepal's decision on environmental rights, among others.⁷

According to UNEP, Environmental defenders remain highly vulnerable and under attack across the globe.⁸ Worldwide, environmental defenders face growing assaults and murders in conjunction with increasing intimidation, harassment, stigmatization, and criminalization. In 2016, at least three people were killed protecting our environmental rights, while many more were harassed, intimidated, criminalized, and forced from their lands.⁹ In 2020, the non-profit organization Global Witness documented an average of four killings of environmental human rights defenders every week, making it the deadliest year for environmental HRDs.¹⁰ In 2021,

6 International Service for Human Rights and the Informal Sector Service Center (INSEC), *Human Rights Defenders Protection Status in Nepal*, June 2021, pg. 1, available at <https://ishr.ch/wp-content/uploads/2021/07/ISHR-and-INSEC-joint-statement-to-HRC47.pdf>

7 WOREC, National Consultation of Women Human Rights Defenders With UN Special Rapporteur, 27 June 2019, available at <https://www.worecnepal.org/camp/17>, accessed on 13th August 2022.

8 UNEP, *Environmental Rule of Law*, First Global Report, pg. 181.

9 UNGA, Situation of human rights defenders, A/71/281, 3 August 2016, pg. 16, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/247/09/PDF/N1624709.pdf?OpenElement>, accessed on 13 August 2022.

10 United Nations, Human Rights Office of the High Commissioner, *Environmental human rights defenders must be heard and protected*, 9 March 2022, available at <https://www.ohchr.org/en/stories/2022/03/environmental-human-rights-defenders-must-be-heard-and-protected>, accessed on 14 August 2022.

The Human Rights Defender Memorial Project documented the deaths of 358 HRDs in that year of whom 59 were EHRDs and indigenous rights defenders.¹¹ In 2022, 68 countries together issued a joint statement highlighting the threats faced by environmental defenders and the intersectionality of the issue, including women, indigenous communities, and other minority environmental defenders.¹² According to the Universal Rights Group, the contributing factors behind the acute and growing vulnerability of environmental HRDs are:¹³

- ▶ growing demand for the extraction and exploitation of natural resources;
- ▶ the lack of political power and legal recognition of the groups that are often most affected by this increasing demand; and
- ▶ Weak or corrupt legal institutions that create a culture of impunity.

However, there are no specific numbers or documentation in Nepal to date that stipulates the situation of EHRDs.

1.3 OBJECTIVE OF THE RESEARCH

The objectives of the research are the following:

- ▶ To assess the situation of environmental rights defenders/activists, with a strong gender focus, and how they are contributing to the protection and promotion of environmental rights as human rights.
- ▶ To explore the level of understanding of legal and policy provisions by the environmental rights defenders and areas of contribution they are making relating to human rights in Nepal.
- ▶ To explore the situation of Nepal especially in the environmental

11 HRD Memorial, *Celebrating those who were killed defending human rights*, in Geneva Environment Network, *Protecting the Frontline: Good Practices for Supporting Environmental Human Rights Defenders*, available at <https://www.genevaenvironmentnetwork.org/events/hrc51-side-event-good-practices-to-support-environmental-human-rights-defenders-across-the-world/>, accessed on 1 December 2022.

12 U.S. Mission to International Organizations in Geneva, JOINT STATEMENT ON ENVIRONMENTAL HUMAN RIGHTS DEFENDERS | HRC 49, available at <https://geneva.usmission.gov/2022/03/16/joint-statement-environmental-human-rights-defenders-hrc-49/>, accessed on 14 August 2014.

13 Universal Rights Group, Policy Brief, Environmental Human Rights Defenders, February 2017, pg. 10, available at <https://www.universal-rights.org/urg-policy-reports/environmental-human-rights-defenders-ehrd-risking-today-tomorrow/>, accessed on 14 August 2022.

rights and human rights defenders' situation for protection and promotion of environmental rights as a human right.

- To identify the prospects, challenges and make practical recommendations, gender disaggregated, for the environmental rights defenders to work in Nepal.

1.4 SCOPE AND LIMITATION

The empirical research is limited within 3 provinces- Sudurpashchim, Lumbini, and Madhesh, one district each is allocated for research where the “SAMRAKSHAN” Project has been implemented, focusing on advocacy for the protection and promotion of Human Rights Defenders and Environment Human Rights Defenders. Kailali district from Sudurpashchim, Banke district from Lumbini and Dhanusha district from Madhesh provinces are the stipulated research areas. The stakeholders in the research were purposively sampled to represent gender and ethical significance.

CHAPTER II

LEGAL FRAMEWORK ON EHRDs OF NEPAL

2.1 INTERNATIONAL FRAMEWORK ON THE PROTECTION OF EHRDs

On 1 March 2022, Michelle Bachelet, UN High Commissioner for Human Rights at the 49th Session of the Human Rights Council highlighted the obligation to respect, protect and fulfil the rights of environmental human rights defenders and the communities they represent.¹⁴ On the 40th session of the Human Rights Council, HRC adopted a first-of-its-kind resolution recognizing the importance of environmental human rights defenders and their protection.¹⁵ Besides access to rights and underlining the positive impacts of EHRDs for society as a whole, the HRC resolution also addressed another important related issue: the environment of impunity for those who threaten human rights defenders. The HRC resolution recognizes the need for access to justice and an effective remedy for EHRDs.¹⁶

On July 28, 2022, United Nations General Assembly recognized that a clean, healthy, and sustainable environment is a universal human right.¹⁷ This landmark move although not binding to the UN member states, is expected to act as a catalyst in bringing positive steps to uphold their obligations to protect the environment and environmental defenders.

Likewise, on August 2022, UNEP, recognizing the threats to

14 United Nations, Human Rights Office of the High Commissioner, High Level Event on Environmental Human Rights Defenders, available at <https://www.ohchr.org/en/statements/2022/03/high-level-event-environmental-human-rights-defenders>, accessed on 14 August 2022.

15 Human Rights Council, Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development, A/HRC/40/L.22/Rev.1, 20 March 2019, available at <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/071/97/PDF/G1907197.pdf?OpenElement>, accessed on 13 August 2022.

16 *Ibid.*, pg. 3.

17 UNGA, *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms*, A/76/L.7ã5, 28 July 2022, available at <https://digitallibrary.un.org/record/3982508?ln=en>

environmental defenders, formulated the Defenders Policy¹⁸ to denounce attacks, advocate with state and non-state actors, support responsible management of natural resources and request government and companies' accountability.¹⁹

In 2019, the UN Human Rights Council unanimously adopted a strong consensus resolution recognizing the positive, important and legitimate role of EHRDs in the promotion and protection of human rights as they relate to the enjoyment of a safe, clean, healthy and sustainable environment.²⁰

All of these accomplishments were possible after a lot of effort put in by the international community. In 1998, the UNGA adopted by consensus a Declaration of Human Rights Defenders.²¹ The Declaration provided special protection to human rights defenders, which included rights to protection and realization of human rights at the national and international levels,²² form associations and organizations,²³ effective remedy,²⁴ peaceful assembly,²⁵ unhindered access to communication with NGOs and inter-governmental institutions,²⁶ amongst others. The declaration provided specific reference to the State on their roles and responsibility to promote, protect, and implement *all* human rights,²⁷ adopt legislations and policies for effective implementation of these legislations,²⁸ amongst others. Additionally, the declaration emphasized on everyone

18 UNEP, Promoting Greater Protection for Environmental Defenders Policy, available at https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/UN%20Environment%20Policy%20on%20Environmental%20Defenders_08.02.18Clean.pdf?sequence=1&isAllowed=y, accessed on 13 August 2022.

19 *Ibid.*, pg. 2-3.

20 Resolution adopted by the Human Rights Council on 21 March 2019 40/11. Recognizing the contribution of EHRDs to the enjoyment of human rights, environmental protection and sustainable development https://ap.ohchr.org/documents/dpage_e.aspx?si=A%2FHRC%2FRES%2F40%2F11

21 United Nations General Assembly, Resolution adopted by the General Assembly, A/RES/53/144, 8 March 1999, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>, accessed on 24 August 2022.

22 *Ibid.*, article 1.

23 *Ibid.*, article 5.

24 *Ibid.*, article 9.

25 *Ibid.*, article 5.

26 *Ibid.*, article 9.

27 *Ibid.*, article 2.

28 *Ibid.*

having a duty towards and within the community and encouraged all to be human rights defenders.²⁹

In 2014, under International Law, the Human Rights Council reaffirmed ‘the duty of states to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises, as provided for in the guiding Principles on Business and Human Rights,’ and ‘the importance of non-discrimination in the application of environmental laws, but also of paying due attention to the members of groups particularly vulnerable to environmental harm, bearing in mind that environmental damage is felt most acutely by those segments of the population already in vulnerable situations’.³⁰

Likewise, Special Rapporteurs have played a vital role in elevating the issues of environmental defenders and those associated with utilizing natural resources for their survival. The Special Rapporteur on the situation of Human Rights Defenders stressed that the second-largest group of defenders are at risk of being killed³¹ are the ones working on land rights and natural resources. According to the Special Rapporteur on human rights defenders, these human rights abuses often involve non-State as well as State actors, including transnational companies, paramilitary groups, and private security guards. And they often take place in connection with extractive, construction, and other development projects.³²

The Special Rapporteur on the promotion and protection of human rights in the context of climate change recommended mandating the International Law Commission to develop an international legal procedure to give full and effective protection to environmental and indigenous human rights defenders by establishing an international tribunal for the prosecution of perpetrators of violence against and the killing of environmental and indigenous human rights defenders ‘within a

29 Ibid., article 18.

30 United Nations General Assembly, Resolution adopted by the Human Rights Council, A/HRC/RES/25/21, 15 April 2014, pg. 3, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/136/17/PDF/G1413617.pdf?OpenElement>, accessed on 13 August 2022.

31 United Nations General Assembly, Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, A/HRC/4/37, para 30.

32 United Nations General Assembly, Territorial integrity of Ukraine, 1 April 2014, A/68/262, para. 18.

two-year time frame'.³³ The Rapporteur mandated ILC to include actions against environmental and indigenous human rights defenders as *ecocide*³⁴ and asked for effective participation of environmental human rights defenders in the national parliament.³⁵

OHCHR highlighted the added risks faced by Women Environmental human rights defenders including, sexual violence, which can have additional adverse social consequences such as stigmatization and discrimination. It emphasized on effort by States to mitigate or adapt to the impacts of climate change and if not properly carried out, can exacerbate the situation, threatening women's rights not only to development, food, water, land, and culture but also to freedoms of expression, assembly, association, and political participation.³⁶ The OHCHR calls State to protect women environmental human rights defenders who 'exercise their rights, including the rights to participation and access to information and justice'.³⁷

2.2 NATIONAL FRAMEWORK ON THE PROTECTION OF EHRDs

The Constitution of Nepal enshrines the right to a clean environment as a fundamental right guaranteed to every citizen.³⁸ The Forest Act of 2019 does not define EHRDs. It provides duties and powers to government authorities and community leaders to preserve the forest. The Forest Act of 2019 prevents the occupation of areas of national forest and asks for immediate action from DFO.³⁹ Likewise, the legislation also

33 UN General Assembly, Promotion and Protection of Human Rights in the context of Climate change, Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, A/77/226, 26 July 2022, ¶ 94, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/438/51/PDF/N2243851.pdf?OpenElement>

34 Ibid., ¶ 95.

35 Ibid., ¶ 97.

36 UN General Assembly, Report of the Office of the United Nations High Commissioner for Human Rights, Analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women, 1 May 2019, ¶ 25, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/120/13/PDF/G1912013.pdf?OpenElement>

37 Ibid., ¶ 61.

38 Constitution of Nepal, 2015, art. 30.

39 Forest Act, 2019, section 7.

provides DFO with the power to restrict anyone from entering a national forest.⁴⁰ The legislation provides DFO with the power to monitor the Community User Groups⁴¹ where DFO can take back the forest from the community user group if the group show discrepancies.⁴² Likewise, the law provides the User Group with the authority to punish any user with a fine if they commit an illegal act.⁴³ The Act stipulates the management, use and distribution of dividends from environmental services to be obtained from the forest area.⁴⁴ While the act has strictly defined the defiance of the provisions of the act by government authorities as punishable⁴⁵, it fails to amplify protection measures for EHRDs, indirectly mentioned in this Act. The protection measures are limited to punishing the one who obstructs while discharging duties⁴⁶ and ‘shooting the offender under the knee’ who is involved in forest and wildlife-related offences.⁴⁷

The Environment Protection Act, 2019 was promulgated to address diverse and novel issues of environment. This act introduced the concept of ‘climate change management’⁴⁸ and issues of carbon trade.⁴⁹ The Act provides for a public hearing with an environmental study report for any development related project in that particular area.⁵⁰ The legislation highlights the responsibility of State and the people to control pollution.⁵¹ The Act provides for an Environment Inspector responsible to monitor if any work is done within the limitations of environment report.⁵² The legislation envisions environmental protection and climate change management national council.⁵³

40 Ibid., section 9.

41 Ibid., section 18.

42 Ibid., section 19.

43 Ibid., section 21.

44 Ibid., section 44.

45 Ibid., section 51.

47 Ibid, section 57- this is titled as ‘Special Power’.

48 Environment Protection Act, 2019, section 2(e); section 23.

49 Ibid., section 28.

50 Ibid., section 3.

51 Ibid., section 15.

52 Ibid., section 22.

53 Ibid., section 32.

Over the period, Nepal put some focus on issues of climate change through National Climate Change Policy⁵⁴ and Climate Change Financing Framework⁵⁵. However, there are no legislations and policies yet dealing with the concerns of human rights defenders and environmental human rights defenders.

2.3 ROLE OF NEPALESE COURT IN THE PROTECTION OF EHRDs

The Supreme Court has vigilantly ordered in favor of the protection of the environment. In *Prakash Mani Sharma vs Nepal Government*⁵⁶ where the petitioner sought the closure of Godavari Marble Factory because of the excessive environmental pollution affecting the people living nearby, the court stresses the importance of balancing development with nature. Likewise, in *EDCLF vs Nepal Government*⁵⁷ where the petitioner sought governmental actions against the air pollution because of the road expansion in Kathmandu, the court highlighted the importance of taking vital steps to stop air pollution. It gave order to clean the roads constantly, fill up the potholes in roads of Kathmandu, carry out plantations, and cover up the vehicles carrying household waste. In *Ram Kumar Acharya vs Nepal Government*⁵⁸ the court highlighted the importance of sustainable development and importance of EIA.

For the first time, in *Padam Bahadur Shrestha vs. Nepal Government*⁵⁹ the Supreme Court ordered the government of Nepal to

54 Government of Nepal, Ministry of Law, Justice and Parliamentary affairs, National Climate Change Policy, 2076 (2019), available at https://www.icimod.org/wp-content/uploads/2021/07/National-Climate-Change-Policy_english_2019_compressed.pdf

55 Government of Nepal, Ministry of Finance, Climate Change Financing Framework: A road map to systematically strengthen climate change mainstreaming into planning and budgeting, 2017, available at https://mof.gov.np/uploads/document/file/CCFF_FINAL_Web_20180222050438.pdf

56 *Prakash Mani Sharma vs Nepal Government*, Council of Ministers, NN 9575, NKP 2073.

57 *Padam Bahadur Shrestha vs. Nepal Government*, Council of Ministers, NN 10131, NKP 2075.

58 *Ram Kumar Acharya vs Nepal Government*, Council of Ministers, NN 8942, NKP 2070.

59 *Padam Bahadur Shrestha vs. Nepal Government*, Council of Ministers, NN 10210, NKP 2076.

enact a new climate change law to mitigate and adapt to the effects of climate change, reduce the consumption of fossil fuels and promote low-carbon technologies, and develop scientific and legal instruments to compensate those harmed by pollution and environmental degradation, among other provisions. It made the government responsible for mitigating the effects of climate change. However, till date, no petitions have been filed seeking better protection regimes for EHRDs or people working for the benefit of environment. During this research, many respondents expressed the need for judicial activism for enacting legislation and developing standards for the protection of EHRDs.

CHAPTER III

RESEARCH METHODOLOGY

3.1 STUDY AREA

The study was conducted with focus on three provinces of Nepal: Madhesh, Lumbini, and Sudurpashchim. The study included Dhangadi of Sudurpashchim Province, Janakpur of Madhesh Province, and Nepalgunj of Lumbini Province.

3.2 STUDY FRAMEWORK

The research adopted two approaches i. Empirical Study and ii. Descriptive Study. The universe for the research included all environmental human rights defenders where ‘SAMRAKSHAN’ project is being implemented. The 51 stakeholders identified from the three provinces- Sudurpashchim Province, Lumbini Province, and Madhesh Province were the sample size of the research. To collect data, the tools of data collection for this research were Questionnaires, Key Informant Interviews and Focused Group Discussions. The list of questions on the Questionnaire was structured, whereas for KII, it was semi-structured. The questions comprised both close-ended and open-ended questions. Most of the KII was performed through a *one-on-one* interview. Some interviews were conducted through telephonic conversations.

The Purposive Sampling Technique and Snowball Sampling Technique were used for identifying interviewees and stakeholders in three provinces. These sampling techniques were used to identify environmental defenders working in the sector of environmental protection. The criteria for identifying EHRDs was the definition adopted by UNGA in 2016, which states EHRDs as “individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora, and fauna”. For secondary data collection, books, research articles, and reports published by INGOs, NGOs, the United Nations, expert groups, and academic institutions were taken into consideration.

The sample from each province was limited to 25 people. These respondents were selected through gender inclusive framework and from diverse backgrounds of work, including Environmental Activists/ Environmental HRDs, Lawmakers/ Parliamentarians of the three states, Government Officials (including local bodies and provincial), Forest User Groups and Committees.

The study design was conducted in the following five steps: a) gap analysis through literature review, b) focus-group discussions to identify the problems, c) key informant interviews for accessing policy gaps, d) selection of case stories, and e) data analysis and report preparation.

For Literature Review, reports and booklets on EHRDs were considered. Focus Group Discussions were conducted with 10 people each in a province. A set of semi structured questionnaires were used in the FGD. More immersive discussions were carried out with few members of FGD for the purpose of case study. The group comprised of local environmental activists, community forest user groups committee members and users of community forest.

For KII, at least 4 people from each province were considered. The KII included district level government authorities like CDOs and DFOs, local level leaders like mayors of the specific province and leaders of FECOFUN.

For Case Study, 1 person from each province was considered to get in-depth personal narratives of EHRDs, their problems, and their suggestive solutions.

The information collected in the field was validated through consultation with local government authorities and representatives from all three provinces.

CHAPTER IV FINDINGS

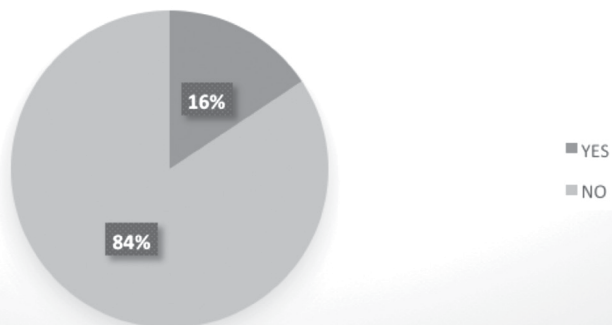
4.1 Self-recognition as EHRDs

People who work in the field of environmental protection do not identify themselves as “Environmental Human Rights Defenders”, per say. The knowledge about EHRDs is very scarce among activists and government authorities. Most of the respondents agreed to their lack of knowledge about their roles as EHRDs as outline by the United Nations. According to them, the pertinent lack of self-knowledge is because of a lack of consultations and policy-level discussions on their role. According to the respondents, the State has not mandated any policies, regulations, or specific protection measures for *EHRDs* and thus, they do not know about their role as EHRDs and their recognition.

Out of 51 respondents, only 16% of the respondents (8 individuals) were acquainted with their renition and roles as EHRDs. Among these 8 individuals, only 2 individuals were female i.e. 4% who recognized themselves as EHRDs.

Kindly note: The demographic representation of the interviews is attached at Annex I below. The total number of respondents was 51 out of which 9 were female.

DO YOU RECOGNIZE YOURSELF AS EHRD?



The inability to recognize oneself as EHRDs has led to various problems in the community. Most of them, especially women, cannot convince themselves and their families about the value of their work. These workers do not feel accomplished because of their involvement. Mostly, women are disenfranchised from their right to recognition as EHRDs. It is the responsibility of the government and concerned stakeholders to empower those involved and make them self-sufficient about their role.

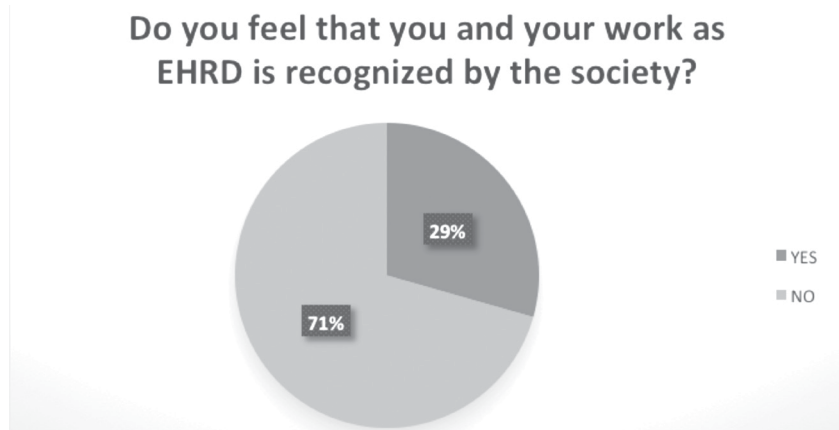
4.2 Recognition by the community

EHRDs who are working for the conservation of the environment are yet to be valued within their community. EHRDs are yet to be identified distinctly as “EHRDs” in Nepal. The lack of recognition is spawned by both the community and the government authorities. *“I have worked in this field for 20 years, tomorrow if I die protecting the environment, no one will care”*, said one of the interviewees in Kailali. People are not aware of the role of EHRDs and very few people are wary of their importance. They are oblivious to the essential role EHRDs play and thus, do not see the work of EHRDs with respect.

The lack of incentives propagates a lack of recognition. Since this is an unpaid service to the community with no monetary inducements, EHRDs explained having a hard time clarifying to their families about their role and for surviving along with their families only with this work. EHRDs shared that it took them years to teach their families the importance of their work. EHRDs are mistaken as one ‘who is working for the sake of fame’. The stakeholders emphasized the role of media in changing and reforming the perspective of EHRDs. Likewise, government officers working in the sector of environment fail to comprehend the role of EHRDs. They themselves do not feel acknowledged for the work they have done in the sector of environment- it is often seen as *‘an unappreciated sector’* within government agencies, as said by interviewees of government agencies located in Banke.

In some places, EHRDs are able to build trust in the community. The community reciprocates the trust after enjoying positive enforcement by EHRDs. For instance, Mithila Wildlife Trust (MWT) can grasp good recognition and trust of the people of the Musahar community as MWT has been engaged in providing Musahar children with free education over the past few years.

Out of 51 respondents, 29% of respondents (15 individuals) felt that their work is recognized by the society. Out of the 15 respondents who feel that the community recognizes their work, 6% of respondents (3 individuals) were female.



Election of the Community Forest User Group Committee is one of the few ways for people to choose their leaders to protect their community forests. An election is a medium of recognition and thus, despite the unpaid nature of work, people are determined to get a post in the said committee. In places of massive expropriation like the Chure Range area, many local people show their trust towards EHRDs in expectation of revolution for protection of the environment. WWF accolades people working in the field of environment and wildlife conservation through the Abraham Conservation Awards.⁶⁰ Although not towards EHRDs as a community but the society has been empathetic towards people who have lost their lives protecting the environment like Omprakash (Dilip) Mahato,⁶¹ as stated by interviewees.

60 WWF, Kalika Community Forest: Building harmony between humans and nature, available at https://www.wwfnepal.org/knowledge_hub_/blogs/kalika_community_forest/, accessed on 12 November 2022.

61 Omprakash (Dilip) Mahato, on January 2020 Dilip Mahato was killed on the premises of a crusher factory when a tipper truck ran over him while he was protesting against the extraction of river materials from the river bed of Aurahi river of Sirpur in Dhanusha. The Kathmandu Post, He was murdered for his fight to save environment. Justice eludes his family two years on, 10 January 2022, available at <https://kathmandupost.com/province-no-2/2022/01/10/he-was-murdered-for-his-fight-to-save-environment-justice-eludes-his-family-two-years-on>, accessed on 2 November 2022.

4.3 Experiences of activism

The respondents shared varied roles as environmental activists. The Environmental activists are responsible for raising awareness in the local communities about deforestation, endangered plants and animals, indigenous use of local resources, and rights and duties of the local community towards the environment, amongst others. They consider their role as a *'service'* to the community. The EHRDs were highly motivated to protect the environment despite the hurdles not just for themselves but also for the sake of upcoming generations. According to one of the interviewees, *'environmental activism goes beyond giving speeches at formal ceremonies'*. One of the *female* respondents remembered the struggle to stop her sister-in-law who was heading with a *hasiya* to cut off a tree from the community forest illegally. Many interviewees opined on the pertinent role women have played in saving the environment. An interviewee said, *'It is mostly women who have saved the forest in Nepal till date with their dedication'*.

The role as EHRDs extends to 24 hours and 7 days of work. These activists have experience working in coordination with the local community on the issues of protection and utilization of local resources, such as holding consultation meetings regarding the expropriation of a nearby river by the government. The representatives of CSOs and Community Forest Groups explained that on issues where the government is involved, the community puts trust in them to lead, explain, and discuss the matter.

During KII, some government officials were eager to get identified as EHRDs. The authorities shared the urgency of the matter and stressed the need to make policies responding to stakeholders involved including the governmental agencies and authorities working in this area.

On the contrary to these uplifting sentiments, the local community users of the forest shared some dissatisfaction regarding their local environmental leaders. They expressed that their Committee of Community Forests User Group does not have new and required plans for the betterment of community forests. The Committee members do not act responsibly towards the people rather are more concerned with the 'profit-making' schemes. The elected environmental leaders are politically influenced resulting in frequent clashes among groups.

On one hand where the work and achievements of EHRDs

are substantial in accessing environmental justice, there are evidently backlogs. EHRDs have in some areas gained trust of the community, whereas in some, it still remains vacant. Environmental issues are political in the local community and thereby, community forest user groups are also politicized and segregated. This politicization is directly affecting the workload, impressions and security of EHRDs. It is pivotal that EHRDs are provided with ample space to work freely locally and nationally.

4.4 Challenges

a. Protection assurance

EHRDs interviewed feel unsafe while working. It is so because of the lack of sense of security from the government. One of the recent cases of the threat faced by EHRDs is the case of Omprakash Dilip Mahato. Omprakash Dilip Mahato was a young activist speaking against illegal and unlimited excavation of riverbed in Dhanusha. On January 10, 2020, he was killed by a tipper truck while he was protesting against the excavation within the premises of the crusher factory. After two years of this incident, his case is still pending in the District Court of Dhanusha District.⁶²

The issues of protection vary. Extra care is to be taken during late-night surveillance in the forest. In many cases, guards of the forest go without weapons and other protection. There are many instances where guards designated by Community Forest User Group Committee called *Ban Heralu* were injured during a confrontation with wood smugglers in the forest. One of the female *Ban Heralu* in Dhangadi had her hand cut by wood smugglers. She was in the forest with a wood stick when she confronted a group of men who were smuggling wood from the community forest. She was hit and cut with a *khukuri*. She was immediately taken to Kathmandu for medical help. She was treated with donations from abroad.

Many activists are under constant threat from wildlife. Many users of the Community Forest User Group have been killed by wild animals.⁶³ The issue of protection must be of serious concern to the government. The

62 Ibid.

63 My Republica, Tiger kills woman yet again in Banke, 6 January 2022, available at <https://myrepublica.nagariknetwork.com/news/tiger-kills-woman-yet-again-in-banke/>, accessed on 11 December 2022.

government must take progressive steps to ensure protection by providing protective gear, dress, identification card and weapons if necessary.

Environmental journalists shared stories of constant threats from businesspersons for writing against crusher factories and about unlimited excavation.⁶⁴ One of the interviewees' shared, when he wrote a status on Facebook about a deforestation initiated by a Mayor for extension of a particular road, the activist received a call from the Mayor himself, threatening the activist and asking him to delete the post. The issue of protection should be promptly addressed.

b. Lack of awareness and advocacy:

Lack of awareness about the role and need of EHRDs is one of the main challenges. Most of the people are unaware of the long-lasting impacts of an unsustainable environment. When many people are insensitive towards the environment itself, there is no scope for people to understand the importance of EHRDs. Since EHRDs are not acknowledged by the government and the community level and do not display any knowledge about EHRDs.

c. No existence of definite law, policy, and strategy plan for EHRDs:

No definite law, policy or strategy plan defines EHRDs. No legislation recognizes people who have been working in the sector of environmental justice. There is no research, documentation, or segregation of people working as EHRDs yet. According to the interviewees, it is expedient to define and categorize EHRDs. After defining the nature and scope of EHRD, self-recognition and recognition by the community can be achieved. There exists a need to define people working in the diverse working areas of EHRDs. For instance, an EHRD working in the sector of forestry might have security threats from wood smugglers whereas an EHRD working in the sector of waste management might have immediate health issues from waste. It is crucial to distinguish various sectors of work of EHRDs while defining the term.

64 Freedom Forum, DEATH THREAT TO JOURNALIST IN NEPALGUNJ, 23 June 2011, available at <http://nepalpressfreedom.org/main/issue-single/436>, accessed on 11 December 2022.

d. Lack of legislation to address the issue of EHRDs:

The Forest Act, 2076 is progressive on many fronts but it fails to protect the ones protecting the environment, including the authorities of DFO and Community Forest User Groups. The Act is effective in providing duties to these actors for the protection of the environment but does not envision possible threats faced by them. Likewise, the Environment Protection Act, 2019 stipulates a provision for a public hearing on any project but fails to ensure the full agreement of the public while starting the project. The Act lists Environment Inspector responsible for monitoring projects and their effects on the environment. A DFO of one of the three districts shared that in Nepal, there are less than 10 people assigned as Environment Inspectors till date- which is not enough to address the present challenges of development projects in the environment. Although the Act envisions a Council for environment protection and climate change, this Council is yet to come into form.

According to the interviewees, this legislation fail to address the issues of indigenous communities who depend on the environment, natural resources, and forests for their livelihood. The perspective of legislation is more penal rather than protectionist. The legislations although *new*, fail to comprehend the protection of defenders of the environment. With the initiation of INSEC, a draft bill for the protection of Human Rights Defenders called Human Rights Defenders' Protection Bill Draft 2021 was prepared. This Bill is in the process of discussion amongst concerned stakeholders, including CSOs as well as government agencies. This draft bill connotes all human rights defenders under one basket. Although this is a much-needed step, separate legislation addressing the diverse needs of EHRDs is equally important.

e. Financial restrain and lack of other incentives:

Environmental activism for many locals and community leaders is an unpaid 24/7 service. Because of the lack of financial security, many interviewees explained how despite their willingness to work all day for the protection of environment, they could not. The work for environmental protection for many EHRDs is voluntary. Activism for EHRDs is a part of social service and they cannot help sustain themselves and their families with this work. So, they are engaged in other professional work or

daily wage work. Many EHRDs stress the impossibility of doing *unpaid, unrecognized work* for environmental protection for a long period of time. ‘*The question is for how long are we to work for free?*’ asked one of the male interviewees. The lack of financial security has demotivated many activists and led to fetch another area of work or job.

Out of 51 respondents, 18% of the respondents (9 individuals) shared that they can sustain themselves and their families through their work as EHRDs. All these 9 respondents were male who were either the main representatives of CSOs or government authorities. None of the female respondents were able to sustain themselves and their families with their work as EHRDs.



As stated earlier, EHRDs are under constant threat and attack- by wildlife and smugglers. To date, there has been no provision providing incentives such as insurance, pension, security allowance, etc. to community people working for the protection of the environment. An example is when a *Ban Heralu*, a forest guard designated by the Community Forest User Group was beaten and her hand cut by the smugglers, her medication was possible because of the donations received from Nepalese abroad and money collected from the community. The government did not contribute to any expense of the victim forest guard.

People who are working as administrative staff of the community forest user groups claimed not to have been paid well as per their workload. One of the male staffs of a Community Forest in Banke explained ‘*if I*

leave this work today, I will not have even a single penny to take away with me'.

Many stakeholders highlighted budgetary deficits in the projects related to the environment at the local level and even in the donations provided by international donors over the recent years. According to interviewees, this financial limit or deficit has an impact on the quality of projects initiated in this sector, their longevity and their impact on the community. A DFO of one of the three researched districts explained *'the work of forest protection does not fall under the priority of the government, thus, the budget is very limited. Even the government offices are under resourced for the protection of forest- there are fewer rifles, trainings, and forest barring materials. So, financial restraint is persistent in the regulatory regime as well.'*

f. Miscoordination among different levels of government:

The ineffectiveness of all three levels of government to solve issues raised by EHRDs on environmental protection and regarding their (EHRDs) protection is one of the major concerns of the EHRDs. Stakeholders complained about the discrepancies during policy level discussions. For most of the discussions, CSOs and activists are rarely contacted. The experiences are negated when they are invited. Even after years of structuration of federalism, coordination is still at a miss. The confusion regarding jurisdiction of different levels of government has taken a toll on implementation of effective projects. The political instability and frequent changes in provincial government have halted many projects and legislations regarding the welfare of environment and protection of HRDs. All the provinces have unique problems which require unique solutions. Thus, district as well as provincial specific policies are necessary. It is expedient that CSOs and the three levels of government work together for the betterment of environmental activists. Many interviewees expressed their dissatisfaction with the provincial level of government in all the three Provinces.

An activist explained, 'After federalism, there is a lot of confusion on delegation of power. A lot of projects have been stuck. Local authorities shift their burden to the provincial government and the provincial government shifts their burden to the local and central governments. There was tremendous amount of work until 2015, but overall, there has been a drastic reduction in work in the

sector of environmental protection. The local government has not put an effort to discuss the issues of environmental protection with activists like us. The three tiers of government need to work in coordination to actively engage with local people for the protection of natural resources and environment.' The mayor of Nepalgunj Sub Metropolitan City highlighted the need for a sufficient budget to carry out major activities for environmental protection- which is missing at the moment.

g. Lack of national, provincial and district level network of EHRDs:

To date, there is no network showcasing collective voices of EHRDs. There is a protruding need for a common platform to raise common issues of EHRDs. They realized their inability to comprehend a network of EHRDs within their locality or area of work. Although there are groups such as PIL Lawyers Network Group in Nepalgunj and collective groups to prevent fire in community forests who coordinate to work collectively in areas including environmental protection, all stressed the need for a specific network working for the benefit and welfare of EHRDs. The CSOs need to play a crucial role in forming a community of EHRDs in Nepal. Although there are a number of organizations working in this area, communal work is still missing.

h. Vulnerability of women, and their need for special care:

Women who work as forest protectors, *Ban heralu* in the community forests are at increased risk of domestic violence, sexual assault, including the burden of family's care and household chores. In some cases, they are pressured by their family members to either leave their activism or bring money into the family through their work. They share that they are unable to do both. When dealing with environment, most of the activists are local people who are utilizing land and natural resources within that area. While articulating about EHRDs, it is essential to consider these local people and groups' traditional use, knowledge and indigenous rights. Likewise, it is important to provide trainings and self-protection schemes to uplift community leaders and activists who are working for environmental protection.

It is expedient for local community leaders and CSOs to organize capacity-building programs in coordination with the local government to

empower marginalized people in the community about the need and role of EHRDs.

1. Lack of infrastructure:

The areas where EHRDs work are highly under resourced. Activists have no identity cards, weapons, dresses, and combat trainings for their safety. The forests are not well barred, which results in security risks for EHRDs. A DFO of one of the provinces shared lack of adequate human resources to handle organized crimes that happen within the periphery of forests.

4.5 Successful intervention stories by EHRDs

The activists shared successful stories of their activism. One of the male respondent from FECOFUN Kailali explained, *'There is a lot we have achieved in the protection of the community forests. The Government taxed the wood of Saal trees up to 40 percent previously. After protests by the activists, the tax was reduced to 15 percent. After rigorous activism, we were able to make women's participation in the community forest group- a compulsory practice. This is a significant achievement. Likewise, when activists face any difficulty, we come together as a group. When a member of the Madhumalati Community Forest User Group was attacked by wood smugglers, FECOFUN Kailali was able to collect funds from people within and outside Nepal for her medical services.'* The Committee of Community Forest User Group has a provision mandatory for women in both leadership positions and as members. The interviewer shared that because of the hard work of women in protecting the forest, the legislation recognized the vital role of women. After many years of revolution, the locally formed committees of the community forests have initiated inclusion with women in prominent positions within the committee.

Despite the hurdles and challenges faced by EHRDs, these activists have been successful in raising voices and expressing concerns over various environmental issues.

The President of Rato Pani Community Forest User Group, Dhangadi, male, explained, *'We have worked tediously to prevent the activities of establishing scientific forest 'Baigyanik Ban' in the Chure Range that would have a huge environmental impact on the villages nearby. We conduct many*

programs for the protection of Chure Range, including plantation, forest barring, and awareness campaigns on the need for protection of forests.'

On a personal level, these activists have been able to create awareness about forest protection within their families. A forest protector, *Ban heralu*, Nepalgunj, *female*, explained '*It was initially very difficult for my family to understand my work. My family members would sometimes go to forests to cut down trees illegally. I had to fight with them. They would insult my work to protect the community forest. However, with regular discussions and talks, my family began to understand my role. I had to take some of my family members to the forest and show them the work I did. Today, they think I am very brave for the work I do.*'

Likewise, the local community has come together to identify solutions to a particular problem with their community forest. The activists have promptly engaged to establish a new Community Forest Group, where a particular area of the community forest is under constant threat and in need of protection. Many CSOs interviewed shared their success stories of establishing Climate Adaptation Villages, coordinating with the local government to buy machinery for waste management, buying safety gear for workers who collect household waste, etc.

EHRDs, along with their organizations, have worked in close coordination with the local government to implement successful and impactful projects of plantation, cleanliness, and waste management in all three provinces. There are locally mobilized youth groups like the *Chori Sikari Niyantran Yuwa Dasta* who have been working informally to catch forest trespassers and smugglers.

The work would be more effective if government and concerned stakeholders take active measures to mitigate the challenges experienced by people working in this area.

4.6 Access to justice and available remedies

Experiences of lack of response from police in cases of emergency during the night, especially when there is confrontation with the smugglers, were consistent among interviewees. According to the respondents, the concept of community forest undoubtedly puts community in charge of the control and monitoring of the forests, along with police and other governmental organizations such as DFO. However, many community activists complain about the inability of these authorities to act promptly

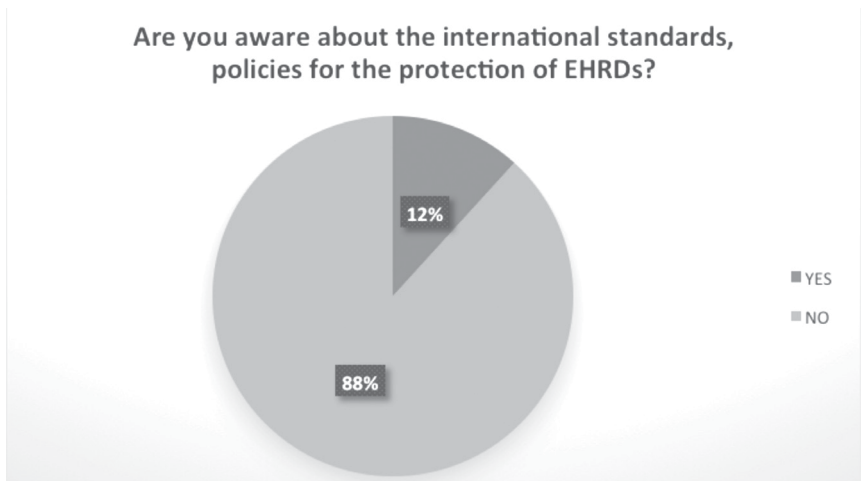
when EHRDs are in danger. Moreover, EHRDs do not feel that they have access to remedies.

The courts have been vigilant to respond environmental concerns but the implementation of these judgements is poor. The activists themselves are involved in some of the PILs and do not have a worthy perspective about the legal procedure. They are skeptical about the time courts take to decide and all the procedural hassles involved.

The judicial activism and activism through PIL resulted in new legislation concerning the environment- The Environment Protection Act, 2076 and the Forest Act, 2076. The court is yet to orate on the issues of EHRDs and HRDs because of lack of public interest litigation on the issues of their protection. This research has enabled a discussion on possible PILs for the protection of EHRDs and the need of specific legislation to address EHRDs.

4.7 Knowledge about international standards and the need of national standards on EHRDs

Out of 51 respondents, only 12% of respondents shared their acquaintance with international policies for the protection of EHRDs. None of them were female.

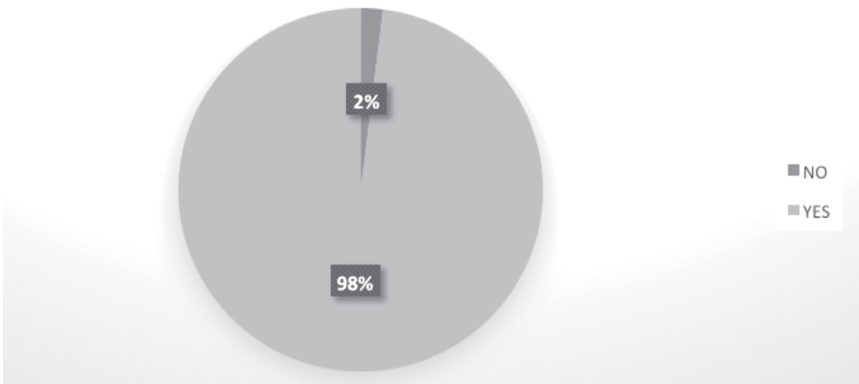


Many interviewers expressed complete unawareness about the existing international legislation, norms, declarations on the protection

of EHRDs. It is expedient for the government and the CSOs to initiate programs that enhance capacity of EHRDs, aware them about existing international standards and discussions and engage them in policy level discussions on issues of environmental protection.

The stakeholders were aware about the existing new Nepalese legislation on environment and forest protection. Most of the interviewees highlighted the need for a separate legislation for the protection of HRDs and EHRDs.

**Do you think seprate legislation is required
for the protection of EHRDS?**



CHAPTER V

CONCLUSION AND RECOMMENDATIONS

5.1 CONCLUSION

1. No legislation, policy, or plan defines EHRDs. No legislation recognizes people who have been working in the sector of environmental justice. There is no research, no documentation, or segregation of people working as EHRDs yet.
2. Many activists working for environmental protection do not recognize themselves as defenders of environmental rights because of their lack of awareness on this issue.
3. Lack of recognition of EHRDs is spawned by the government, the family, and society. People are not aware of the role of EHRDs and very few people are wary of their importance. They are oblivious to the essential role EHRDs play, thus, do not see the work of EHRDs with respect. Mostly women are impacted with this adversity.
4. The lack of incentives propagates a lack of recognition. Since this is an unpaid service to the community with no monetary inducements, EHRDs explained having a hard time clarifying to their families about their role.
5. People working for the protection of environment do not feel protected by the State. They face constant threats from wood smugglers, thieves, and local people who do not get to use the woods of forest as per their convenience.
6. Lack of financial incentives, lack of insurance schemes, and lack of social surety schemes have disabled EHRDs from working full-time towards environmental protection.
7. The ineffectiveness of all three levels of government to solve issues raised by EHRDs is one of the main challenges faced by EHRDs.
8. To date, there is no network showcasing collective voices of EHRDs. All the interviewees stressed the need for a common platform to raise common issues about EHRDs.
9. Despite the hardships, EHRDs have achieved monumental achievements. They have worked to raise awareness within the local

communities about deforestation, endangered plants and animals, indigenous use of local resources, and rights and duties of the local community towards the environment, among others. Yet, these achievements remain concealed because of lack of recognition.

The new legislation on environmental protection fail to comprehend the protection for defenders of the environment within these new legislation. The judicial activism and activism through PIL resulted in new legislation concerning the environment- The Environment Protection Act, 2019 and the Forest Act, 2019. The court is yet to orate on the issues of EHRDs and HRDs because of lack of public interest litigation on the issues of their protection.

5.2 RECOMMENDATIONS

The **government authorities** are recommended to:

- ▶ Initiate policy level discussions with EHRDs to formulate legislation, programs, and policies apt for the betterment of EHRDs at all levels of government.
- ▶ Frame and implement awareness programs to inform people about the role and need of EHRDs in the community through the Ministry of Forest and Environment in coordination with the concerned local government.
- ▶ Coordinate with CSOs and community leaders to create a common platform for EHRDs at all three levels of government.
- ▶ Provide physical combat training and self-defense training to people who are working on the ground level to protect the environment and forest under the leadership of local government authorities.
- ▶ Develop mechanisms to identify EHRDs and provide identity cards.
- ▶ Initiate social security and employment schemes for EHRDs.
- ▶ Create well-developed infrastructure and adequate human resources in government offices to deal with the constant threats faced by EHRDs from wildlife, wood smugglers, etc.
- ▶ Create an environment for dialogue and discussion through coordination among national and province governments, National Human Rights Commission, and local governments to approve the

Draft Bill on the protection of human rights defenders prepared by INSEC.

The **local community leaders** are recommended to:

- ▶ Raise awareness on the existing international and national norms for EHRDs.
- ▶ Organize capacity-building programs in coordination with the local government to empower people in the community about need and role of EHRDs.
- ▶ Coordinate with local level government to initiate plans and schemes for the protection of EHRDs.

The **CSOs** are recommended to:

- ▶ Build a network and a common platform for EHRDs.
- ▶ Develop awareness campaigns, evidence based advocacy plans, and capacity building programs to aware people on their role as EHRDs.
- ▶ Raise awareness about the need for EHRDs in the community.
- ▶ Build, train, and empower youths who can further their work on environmental protection- build new groups of EHRDs.
- ▶ Discuss and negotiate the need for separate legislation for EHRDs while in discussion with various levels of government.
- ▶ Work in close coordination with three levels of government to address unique challenges of EHRDs in their respective provinces.

I. DEMOGRAPHIC REPRESENTATION OF RESPONDENTS

KAILALI

Work Area	Gender	Ethnicity
Forest Protector	Female	Dalit
Community Forest User Group Member	Female	Dalit
Community Forest User Group Member	Female	Chettri
Secretary of the Committee for Community Forest User Group Member	Female	Chettri
Sub Secretary of the Committee for Community Forest User Group Member	Male	Dalit
Community Forest User Group Member	Male	Dalit
Community Forest User Group Member	Male	Brahmin
Head of the Committee for Community Forest User Group Member	Male	Dalit
Executive Director, Youth Acting for Change (YAC) (CSO)	Male	Brahmin
Project Coordinator, YAC	Male	Brahmin
President, YAC	Male	Chettri
General Secretary, YAC	Male	Chettri
President, Federation of Community Forest Users, Provincial level- Sudurpashchim	Male	Brahmin
Office Secretary, Deuriya Community Forest User Group	Male	Dalit
User of the Community Forest	Male	Dalit
President, Kailali District Court Bar Association	Male	Brahmin
District Forest Officer, Kailali	Male	Brahmin
DSP, Nepali Police, Kailali	Male	Brahmin
District Attorney General, Kailali	Male	Brahmin
Head of Department of Environment and Crisis, Dhangadi Sub-Metropolitan City Office	Male	Brahmin
Coordinator, Dhangadi INSEC	Male	Brahmin
District Representative, INSEC	Female	Janajati

BANKE

WORK AREA	Gender	Ethnicity
President, Bheri Environmental Excellence Group	Male	Janajati
President, Nepalgunj District Court Bar Association	Male	Janajati
President, Nepalgunj High Court Bar Association	Male	Chettri
Environmental Activist, 8 billion Trees Project	Male	Chettri
Environmental Activist	Male	Madhesi
Senior Advocate, Network of PIL Lawyers, Nepalgunj	Male	Janajati
Environmental Journalist, Himalayan TV	Male	Brahmin
Treasurer, Dalit Women Association	Female	Dalit
President, Federation of Community Forest Users, District level- Banke	Female	Janajati
Deputy Chief District Officer, Banke	Male	Brahmin
Deputy Forest Officer, Banke	Male	Chettri
National Human Rights Commission, Lumbini Province Branch Office, Nepalgunj	Female	Chettri
Inspector, Nepal Police, Nepalgunj	Male	Brahmin
Environmental Engineer, Nepalgunj Sub-Metropolitan City Office	Male	Chettri
Coordinator, Nepalgunj INSEC	Male	Brahmin

DHANUSHA

Work Area	Gender	Ethnicity
President, Third Alliance, Janakpur	Male	Madhesi
President, CIC, Janakpur	Male	Madhesi
President, Green Space Nepal	Male	Madhesi
President, Kayapalat	Male	Madhesi
WOREC Province Coordinator	Male	Madhesi
First Food Network	Female	Madhesi
Earth Clean Green Foundation	Male	Madhesi
District Forest Officer, Janakpur	Male	Madhesi
President, District Court Bar and High Court Bar Association	Male	Brahmin

PIL Lawyer	Male	Madhesi
Parliamentarian, HOR	Male	Madhesi
President, Mithila Wildlife Trust	Male	Madhesi
Mayor, Janakpur Sub metropolitan	Male	Madhesi
Coordinator, Janakpur, INSEC	Male	Madhesi

II. QUESTIONNAIRES AND KII QUESTIONS

Empirical Research

Questionnaire For Quantitative Data

Name नाम Age वर्ष

Location ठेगाना

Identify as Male/ Female/ Others

- Do you know the role of EHRD? के तपाईंलाई EHRD को कामहरूको बारेमा थाहा जानकारी छ ?
 - Yes
 - No
 - A little bit
- Like you, who are other EHRDs in your place? Can you name a few? तपाईं जस्तै यो ठाउँका अरू EHRD को नाम बताईदिनु होस् ।
- Share your experiences as an EHRD. EHRD भई काम गरेको तपाईंको केहि अनुभव भनिदिनुहोस् ।
- Do you face any problems or issues while raising your concerns to the authorities? कुनै सरकारी निकायलाई आफ्नो समस्या वा केहि कुरा राख्दै तपाईंले कुनै दुःख हैरानी सहनु परेको छ?
 - Yes
 - No
- If yes, who causes these problems/issues? यदी हो भने, यस्ता दुःख हैरानी कुन निकायबाट हुने गरेको छ?
 - Government (Local/ Provincial/ Central)
 - Family members
 - CSOs

- d. People of the community
 - e. Other:
6. Do you feel that your concerns are being heard by the authorities?
के तपाईंलाई आफ्नो गुनासो को सुनुवाई भएको जस्तो लाग्छ?
a. Yes
b. No
 7. Are your concerns being heard promptly? के तपाईंको गुनासो छिटो
छरितो रूपमा सुनुवाई भएको जस्तो लाग्छ?
a. Yes
b. No, it takes a lot of time
 8. Have you received any remedy from the authorities after you raise
your concern? के तपाईंले आधिकारिक निकायबाट आफ्नो गुनासो/
समस्याको कुनै समाधान पाउनु भएको छ त?
a. Yes
b. No
 9. Are you aware about international laws and policies on the
protection of EHRD? के तपाईंलाई EHRD सम्बन्धी अन्तराष्ट्रिय
कानूनहरूको बारेमा जानकारी छ?
a. Yes
b. No
 10. Are you aware about national laws and policies on the protection
of HRDs? के तपाईंलाई EHRD सम्बन्धी राष्ट्रिय कानून तथा नीतिहरूको
बारेमा जानकारी छ?
a. Yes
b. No
 11. According to you, what are some of the areas for EHRDs and
HRDs, in which laws and policies are required? तपाईंको अनुसार
EHRDs and HRDs को लागि कस्ता कस्ता कानून तथा नीति बनाउन
आवश्यक छन् ?
a. Protection
b. Promotion
c. Others:.....

Questions For Qualitative Data

a. With Local Activists (FGD) (Semi structured questions)

- Who are the EHRDs in your area? (getting to know if they understand the concept of EHRD)
- Sharing experiences as EHRD (focus on intersectional/marginalised experiences)
- Do they endure any type of problems or issues while raising a voice? What types of violations do they endure?
- Who are the perpetrators and how do they operate?
- What are the available laws and legal remedies for protection? Are they enough and useful?
- What are the strategies used by your local government for your protection?
- What are the mechanisms that are available to individuals at the local, community, and national levels for protection?
- What is the role of CSOs or Donor agencies in your community?
- Any recommendation?

b. With government authorities (Semi structured questions)

- Do you have documentation of EHRDs in your community? Who are the local group you reach out to when there is an issue related to environment, using of indigenous sources of waters, etc?
- Sharing experiences dealing with EHRDs (focus on intersectional/marginalized)
- Awareness on laws
- How do they deal with issues arising out of local usage and indigenous control?
- Special protection or privileges to EHRDs
- What are the mechanisms that are available to individuals at the local, community, and national levels for protection?
- Any recommendation?

c. With CSOs (Semi structured questions)

- What are some of the steps taken by CSO in this province to promote and protect EHRDs?
- What are the challenges of EHRDs in this province?
- Do the local people understand these issues as a part of their rights?
- Are Government officials responsive of the needs and protection of EHRDs?

III. PHOTOS



Figure 1: Conversation with District Forest Officer of Janakpur



Figure 2: FGD with Representatives of CSOs in Janakpur Working on the Issue of Environmental Protection



Figure 3: FGD with Representatives of CSOs in Nepalgunj Working on the Issue of Environmental Protection



Figure 4: Conversation with President of FECOFUN, Nepalgunj



Figure 5: FGD with Representatives of YAC Nepal, Dhangadi



Figure 6: Conversation with DSP, Kailali District Police Office



Figure 7: Conversation with Representatives of Kailali District Court Bar Association



Figure 8: Conversation with a Community Forest User Group in Dhangadi



Figure 9: Conversation with FECOFUN Kailali Representative



Figure 10: Conversation with Mayor of Nepalgunj Sub Metropolitan City

INSEC BOOK NO.: 204

For Human Rights and Social Justice



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