

Restructuring protected areas::

Exploring democratic governance framework of conservation areas in Nepal

A Roundtable interaction on 3rd July, 2011 (19 asadh 2068)

(SAP Falcha Barmahal Kathmandu)

A Synthesis Report

**Prepared by
Jailab Rai**

Organised by:



**ForestAction Nepal
Satobato, Lalitpur, Nepal**



**Federation of Community Forest Users, Nepal (FECOFUN)
Baneshwor, Kathmandu**

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Introduction

There has been a growing concern over how protected areas should be governed in post conflict Nepal. While Nepal has brought innovative policies, legal and institutional modalities of protected areas and is globally known for its long history of participatory conservation, the decisions of the government in recent years have largely been contested by local communities, Civil Society Organizations (CSOs) and stakeholders. The plea for greater role of local communities in natural resource management and nature conservation has not been adequately addressed yet. Notwithstanding the well proven community based approaches to sustainable management of forest and biodiversity, the government recently has sought to expand protected areas. Consequently, there have been growing conflicts between the government and diverse sections of local communities and stakeholders. In many cases the government's decision have been contested, challenged and even resisted.

The contestation over protected area management has heightened due to the government's decision to declare conservation areas and handing over the management authority to other entities than the grassroot one (e.g. handover of Gaurishankar Conservation Area [GCA] to National Trust for Nature Conservation [NTNC]). Such decision has begged wider public debate on the role and authorities of democratic government and sovereign citizen in governing the country's resources. It has demanded serious dialogue on the purpose and governance modality of protected areas (PA) in general and conservation areas in particular. It is in this context, ForestAction Nepal and Federation of Community Forest Users Nepal (FECOFUN) jointly organized the Ban Chautari on the issue.

Objectives of the Interaction

The general objective of this interaction was to bring the agenda of conservation areas into the public debate and contribute to facilitate an informed dialogue towards designing an appropriate governance modality of protected areas in Nepal.

The interaction provided a platform to understand the perspectives of diverse stakeholders including local communities, conservation professionals and policy makers over protected area governance. .

Process of Interaction and Participants

Fifty seven individuals from different organizations (see Annex 3) participated in the interaction. Apsara Chanpagain, chairperson of FECOFUN, welcomed the participants and highlighted the issues around newly declared protected areas. She stressed the need to recognize community forest user groups (CFUG) rights in their forest and accused the state for its deliberative attempt to trap CFUGs inside the conservation areas. Referencing the series of fruitless interactions on the issue in the past, she expressed her frustration.

However, she was also optimistic towards the Ban Chautari process in bringing the issue into public debate and making some concrete progress towards resolving the issue.

The programme was followed by a thematic presentation by Dil Raj Khanal on the status of conservation areas, the governance issues, and some questions related with conservation governance modalities in Nepal. Some main issues raised by him were as follows:

- The maximum coverage of the conservation areas in the country?
- The rationale of expanding conservation areas in Nepal?
- Adequacy or inadequacy of existing legal instruments related with conservation?
- The process of the formulation of conservation laws?

The presentation was followed by a panel discussion. Five panelists were requested to share their views on the specific key questions asked to them by the organizers (see Annex 2). The perspectives of the panelists were given in the following table. After this, the floor was opened for open discussion. All the participants had the opportunity to participate and contribute through questions and comments. Some participants put questions to the panelists and others shared their opinions/suggestions for conservation area governance modalities. Along with the response of panelists, Dr. Prabhu Budhathoki summarized the outcome of interaction (see Annex 1 for program schedule).

Key Questions for Interaction

The discussion was focused on some key questions/issues on the PA governance in Nepal, which are given below:

- The number and size of PAs (in different forms) in Nepal are increasing. It begs a question of how much will be the maximum coverage of the conservation areas in the country? What are the rationales for expansion of PAs?
- Does the process of PA declaration and management is agreed and accepted by all stakeholders? Do the local communities have feeling of ownership upon the declared conservation areas, its management and benefit sharing?
- Do conservation area management modalities in Nepal have been able to recognize the legal (national and international) and customary rights of indigenous peoples and local communities?
- Is it justifiable to expand PAs, given the widespread resistance against PA management?
- What are the roles and responsibilities of diverse stakeholders in governing and managing PAs?
- What could be the alternative governance models of PA in general and conservation area in particular? What can we learn from various participatory practices of resources management and governance?

- What could be the agenda for PA restructuring in the context of recent political changes and popular mandates for state restructuring?

Panelists and their Perspectives on the

| Panelists | Perspectives |
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| <p>Ghanashyam Pandey (GACF)</p> | <p>Current PA management modalities are regressive in the eyes of FECOFUN and civic movements in Nepal. Historically, the conservation policies of Nepal have supported the feudal system, the monarchy and their families and their close allies; often at odds with the democratic rights of people and spirits of socio-economic and political transformation of the country. It appears that the government and the park authorities have not recognized the mandate of the previous movements towards a change for people’s sovereignty. Similarly, conservation policies and PA management have seriously violated the human rights over natural resources. Local communities are not against the conservation of biodiversity but they are demanding for their rights and ownership upon natural resources in and around the protected areas.</p> <p>Likewise, the GCA declaration process did not adopt a democratic process as well. Since, NTNC committee chairperson (Minister of Forest and Soil Conservation) decided to give GCA to his own organization (NTNC) without any open competition. Hence, this is a form of political corruption which is against the public procurement law. Moreover, most of the conservation area (CA) declarations and management system have ignored the international legal provisions (UNDRIPS, ILO 169, CBD etc) for the rights of local communities and indigenous people. So, local communities and indigenous people’s rights to manage, utilize and conserve natural resources in and around the conservation areas must be ensured in new conservation area governance modalities.</p> |
| <p>Juddha Gurung (NTNC)</p> | <p>The conservation modalities and approaches in Nepal have been changing along with global transformation (for example National Park and Wildlife Act 1973 has been revised four times). The focus now has shifted away from old species oriented protection to wider landscape conservation. The NTNC is also changing its approaches and modalities according to local needs and is looking for suggestions and cooperation from all related actors including local communities.</p> <p>NTNC has a long experience on conservation area management through people’s participation (Conservation Area Management Committee-CAMC) since 1986. It is recognized as a good model of integrating conservation and development. For example, in Annapurna Conservation Area the local</p> |

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| | <p>people are given full rights and authorities to decide and implement programmes as per their needs. The working modality of NTNC is very transparent (Government level's auditing and our own public auditing system). As a result, the forest in the region has regenerated; ecosystem services have enhanced and at the same time huge physical and social capital have been built.</p> <p>NTNC is likely to be the first one to initiate participatory conservation model in Nepal (e.g. mother's group [<i>Amma Samuha</i>] for the first time was developed and actively participated in mid 1990s in ACAP). It, also, has a long experience on promoting tourism and other income oriented activities. This is by making local people capable of managing their conservation area themselves. This shows that NTNC plays the role of a facilitator, and not as a ruler.</p> <p>Regarding the protests of local people in the GCA, there are no signs of any protests at the community level but it is taking place only at the mid-level. The declaration of GCA is not a random process, but based on the people's demands (the decision was actually based on the demand of the Dolkha District Development Committee in 2056 BS). NTNC did not go by its own, but Government of Nepal invited NTNC for managing the GCA (including other two). It must be due to the long and good track record of NTNC in leading participatory conservation process. NTNC is conducting activities under the existing legal and regulatory framework (e.g. 1973 Act and 2053 guidelines), which is in accordance with GoN's provisions. Besides, making local people capable of managing their conservation area and realizing the benefits of conservation is NTNC's prime objective. It is going to apply its long experience of ACA and MCA to promote conservation and development in Gaurishankar area as well.</p> |
| Somat Ghimire (CDO) | <p>People around protected/conservation area are not happy/satisfied with current conservation interventions. They experienced that their traditional rights and control over the resources have been curtailed in the name of nature conservation. State restructuring processes aims to enhance in people's cultural, political, economic and social rights and also agree on the need of restructuring conservation area in Nepal. Nevertheless, there is contradictions and dilemmas amid people's demands and government's attempts to solve problems in and around PAs. It means government has adopted developmentalist approach by giving some incentives (funds for development) often keeping people away from the resources. But people's demand is to get rights of access and ownership over natural resources. Moreover, there is also some misunderstanding about the people's demands that local people are against conservation. However the truth is, people</p> |

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| | <p>have demanded conservation with management rights, but authorities are allowing to limited management rights, though in some cases they allow access and withdrawal.</p> <p>The government’s policy is not coherent across the sectors and ministries. Different ministries and line agencies have different understanding of the concept of conservation. For example, Ministry of Agriculture and Cooperatives (MoAC) is promoting commercial farming whereas Ministry of Forest and Soil Conservation (MoFSC) is promoting isolated conservation areas. When the government is trying to keep 40% as forest land and over 30% as protected areas, they seem to have closed their eyes on food scarcity, hunger and land conflicts over the protection of forest area. Here the issues of increasing or decreasing the size of conservation area is not important but the modality of how and who manages these sites is important. If people are allowed only to see the greenery while compelled to live with hungry stomach, long term PA sustainability is in jeopardy.</p> <p>There are three prevalent issues of conservation area management in Nepal. First is, conservation area management practices in Nepal have not fully respected and recognized the international legal rights (e.g. indigenous people’s rights). Second, PAs in Nepal are largely controlled and managed by government bureaucracies; often undermining participation of local people. Thirdly, there is no real participation of local communities and indigenous people in most of the PAs.</p> |
| <p>Pasang Dolma Sherpa (NEFIN)</p> | <p>The process of declaring conservation areas in Nepal is making natural resource dependent communities (indigenous peoples and local communities) highly victimized as it denies their traditional livelihoods practices. Moreover, the phenomenon has ignored their rights to resources (e.g. Free, Prior Informed Consent [FPIC] rights) which are clearly provisioned under national and international legal instruments. The debate is not new, however appropriate solutions have not yet been sought out.</p> <p>Regarding declaration of new conservation areas, many of the researchers across the world are surprised to see the slow progress of implementing many the national and international provisions, despite its apparent preparedness and signing of all the major international agreements and conventions by the government.</p> <p>The indigenous peoples around the conservation areas are still confused and afraid of state’s interventions upon the resources in and around them. They have no capacity or resources to oppose or resist it. Another problem of conservation areas is the distorted information, which means there is no sufficient and organized information on the issues to be communicated</p> |

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| | among stakeholders of conservation areas. |
| Krishna Prasad Acharya (DNPWC) | <p>The debates of conservation area in Nepal are somehow over politicized. All the related actors and people have the responsibility to protect their environment. The government alone cannot bear the burden.</p> <p>Amidst of critical voices from civil societies, political leaders are still putting pressure for declaration of new conservation areas in Nepal (at least 10 proposals for additional conservation areas are already on table). Diverse actors including local leaders, members of parliament and conservationists are demanding it. Therefore, if you do not want to expand PAs, or if you want more democratic process, you must engage with political actors beyond the DNPWC. The government itself cannot stop such demands. Also, those actors who advocates for community management process, must rethink that why the demands for more PAs are coming and what is lacking within community based approach?</p> <p>Regarding the declaration of new conservation areas in Nepal, there are some drawbacks in the processes. However, some of the conservation modalities are very good examples across the world.</p> <p>The contradictions and dissatisfactions in and around the PAs, somehow, are due to poor implementation process. Besides, the wildlife related conflicts are real and are creating local dissatisfaction. In many cases government actually is not able to enforce the laws. As a government employee, we try to ensure rules are abided by. However, sometimes when we try to properly implement the government rules, people feel difficulty in following them. Furthermore, it is also understood that demands for rights must be linked with responsibilities. Besides, it is also true that all people in and around the conservation area are not demanding the rights for resources. So, instead of politicizing them it needs to be discussed and identified.</p> <p>It is concluded that it is the ethical rights and responsibilities of political leaders and activities to consider the rights of bio-diversity/species including the human beings. The DNPWC is now evaluating (including ACAP) the whole conservation area management learning to apply it in other areas.</p> |

Key Issues Raised by Participants

Most of the participants were focused on criticizing the existing conservation area management system and current move of the government (declaration of new conservation area and giving its management rights and responsibility to outsiders [NTNC] without local consultations). The issues raised by the participants can be grouped into six points:

- 1) Immediate need to revise existing conservation area related laws:** Participants were concerned with the existing legal instruments of conservation areas. They asked why the government was not interested to revise the laws. They demanded wider consultations and incorporation of good experiences/learning of conservation area management in the amendments. Some participants raise questions about the transparency and fairness of the policy practices. Participants strongly criticized the way the government was handling GCA case, as the government and NTNC were operating it according to the outdated 2029 Act and 2053 guidelines. They suggested for the amendment of National Park Act 1973 before working on the regulations for conservation area management. It was equally stressed that the better laws would able to promote cooperation among the actors for better implementation, monitoring and evaluation of conservation activities. There was frustration among the participants on the subject that despite series of research and discussions, the stakeholders had not behaved responsibly to materialize the learning from such interactions. Due to which there are continuous contestation and conflicts going on between local people and the government.
- 2) State's inadequacy to address legal and customary rights of local communities and indigenous peoples:** The second important concern of most of the participants were on the inadequacy of existing conservation policies in recognizing and respecting customary rights of local communities and indigenous peoples. The participants were of the opinion that the existing laws and practices for conservation area do not respect, acknowledge and recognize local knowledge and resources conservation initiatives. They also were equally concerned about the negative impacts of state led conservation interventions upon the traditional livelihoods of indigenous people and local communities.
- 3) Dissatisfaction upon the process of new conservation area declaration:** The third issue was about the declaration of new conservation areas. Most of the participants showed their disappointments with the process adopted by government to declare new conservation areas. Lack of adequate consultation and lack of Free-Prior Informed Consent (FPIC) to local and indigenous people were their major dissatisfactions in the processes. They also blamed the government for developing fake reports of consultation with the 'government selected yes-men' rather than the real stakeholders. It was claimed that local people were uninformed about the declaration and consultation process. The local communities had little knowledge on the recent activities of NTNC and the government in their area. This, according to them, cannot be termed as a good consultation process.
- 4) Demands for the new form of conservation area governance modalities:** The fourth issue raised by the participants was on the possibility of developing new modality of PA governance. They stressed that the new governing modalities must be based on the experiences of successful practices from ACA and KCA. Most of the respondents suggested that the government should consult related stakeholders for developing new form of governance modalities. Some participants stressed that the status of existing CFUGs must be recognized within conservation areas.

- 5) Recognizing community rights for conservation area management:** The fifth concern of participants was about rights of local communities (mostly resource dependent communities) to manage, utilize and conserve resources in and around them. Most of the participants speaking for local communities and indigenous people stressed that they have been excluded from traditional use rights of resources under the existing conservation management modalities. They argued that new form of conservation area management modality must ensure the rights of marginalized, excluded and poor communities over natural resources. It is also pointed out that the new modalities of conservation area management (including GCA) must address the needs and demands of resources dependent communities. It was argued that local peoples' feeling of ownership is important for successful conservation area management.
- 6) Revising the roles and responsibilities of conservation area actors:** Participants stressed for active roles and responsibilities of marginalized, excluded and poor communities including indigenous people. They stressed that local communities must have key roles and responsibility for deciding and implementing development activities in their own communities rather than the external agencies like NTNC. Instead, NTNC can provide technical expertise and facilitates for process. Most of the participants argued that community managed conservation is a cost effective process. However, others challenged the idea by giving argument that community management system is comparatively costly if we include the direct and indirect efforts of all community members in management. In addition, Innovative forms of partnership between government and local actors were also suggested for the success of conservation activities in future.

Responses of Panelists

Regarding GCA declaration, the government and NTNC claimed that the process followed a due process of consultation with local people (e.g. reference of meeting minute in District Development Committee [DDC] in 2056 to declare GCA). However, as participation is loosely defined, any consultative process can be claimed as some sort of participation. It was broadly agreed that the public policy processes in the field of conservation was not adequately fair, transparent, and participatory. Constructive engagement of all stakeholders was sought to enhance the quality of stakeholders' engagement.

The panelists were agreed and viewed that existing conservation laws do not respect the rights of local communities and indigenous peoples. It is also stressed that the rights of marginalized and excluded communities are ignored under the existing policy and institutional modalities. Some panelist also argued that there must be legal provisions for ensuring the cultural and economic rights of these communities under new forms of governance modalities. Supporting the community managed system, they viewed that the processes of developing conservation area management modalities must identify and learn from the previous learning and experiences. Moreover community institutions like CFUGs should be recognized and incorporated into the new modalities. Similarly, they also stressed

that DNPWC should be taking initiative to garner support from diverse actors in the formulation of new acts for conservation area management.

Major Contradictions

During the interaction following contradictions emerged out which need further discussions:

- 1. Process to revise the existing legal instruments:** The participants saw need to revise the existing legal instruments, but the government officials were not very enthusiastic to do so. The low enthusiasm was attributed to the delayed constitutional process and issues related to the proposed federal structure of the state. In such situation how to deal with these rather larger political process was less resolved.
- 2. Contested legitimacy of the existing law and regulation:** The participants questioned about the legitimacy of the existing laws and regulations as it did not mandate and appreciate the people's movements for rights. Obviously, these legal and regulatory frameworks do not fit in the new democratic political system. Unfortunately, the government, particularly the DNPWC has to operate under the existing law unless it is replaced by the new one.
- 3. Legitimacy of GCA declaration and consultation process:** Huge contestation remained in the process of the GCA declaration. The government representatives claimed that the process was based on the consultation with local people. They argued that the criticism is only at the mid and upper level and not at the grassroot level. The community activists, on the other hand, argued that the consultation process was inadequate. The real people (local communities and real stakeholders) were not consulted.
- 4. Do existing conservation area governance modalities are participatory?** Participants contested on the level of participation of local people in PA management. The government officials claimed that the PA management is progressive; people oriented and that the approach is well known globally. The current community based modalities should be appreciated rather than always criticizing. In contrast to these, others argued that people around conservation area are not happy with conservation interventions, as the intervention modalities are not adequately inclusive and are instrumental with short term incentive based rather than right based.
- 5. PA management and international conventions and agreements:** The contestation also remained about the compliance with existing legal (national and international) instruments. The community actors, researchers and civil society leaders viewed that conservation area governance modalities have not addressed the international conventions, laws and treaties. But the government people argued and stressed that all demands are not appropriate and did not come from the real people, many of them have been politicized. Some argued that there is misuse of power and authorities in the name of indigenous peoples and local communities and hence proper monitoring and implementation of laws is needed.
- 6. Role and responsibilities of diverse actors in conservation:** The government officials argued that most of the rights and responsibility related concerns were political and

personal interest based rather than felt needs. They also argued policies are not the problem. Instead, lack of effective implementation of these policies was the major problem. It was stressed that officials and conservation organizations often bypass the local communities. Community leaders and civil society activists defended for a strong role of local communities and local institutions in conservation.

Conclusion

Exploring new alternative modalities for conservation area management has become a common concern of all the participants and the panelists. The need for restructuring the conservation area governance was largely agreed. Also, the limitation of technical and instrumental approach to address park-people conflicts was realized.

The issues related to rights of indigenous people were highly appreciated. Participants realized the need to generate a genuine political will and honest efforts in addressing these fundamental issues rather than technical and instrumental incentive structures. For this to happen, diagnostic analysis of rights, roles, responsibilities, and resources dynamics would be first step towards informed dialogue on the subject.

The existing laws may be less relevant to the changing Nepali socio-political context. Besides, the legal and regulatory framework should be amended to streamline the international standards (international laws, conventions, treaties etc. like ILO 169, CBD, UNDRIP etc) in conservation practice. Unfortunately, there was no preparedness from the government part for timely revision of these laws. It is somehow backed up by the confusion and dilemmas of states' line agencies to understand and define the concept of conservation.

Regarding GCA, the decision and consultation process requires rethinking. Even the existing participatory initiatives in ACA and KCA should be examined from the current political reality (e.g. people's awareness level, organized strengths). People's aspiration related with conservation area is very high today. So, it may be wrong to compare previous success with today's needs and demands.

The local people are demanding for well respected and recognized roles in conservation area management. In this context the indigenous and community based conservation modalities (Indigenous Community Conserved Areas-ICCAs) may present an acceptable alternative. It is time to revise the roles and responsibilities of different actors. There is no possibility of agreements with same type of roles and power of local communities in different areas. Now, people who were passive recipient of benefits are demanding for their active roles in conservation activities. The truth is that most of the powerful actors until today are not willing to deliver authority to local communities. However, without a functional collaboration and high level of trust between government agencies and local communities, it is hard to ensure long term PA sustainability.

Finally, continued dialogue is expected to help understand government and stakeholders' position and views which ultimately help reach in fruitful negotiation.

Acknowledgement

We would like to thank GFP for financial support to organize the Ban Chautari. Similarly, we acknowledge all the panelists for their time and candid opinion on the issue. We are highly grateful to Naya Sharma Paudel (moderator) and Prabhu Budhathoki for synthesizing and conceptualizing the whole interaction outcomes. Also, thanks go to Dil Raj Khanal for his support on background presentation based on quick and timely analysis of policy and practice around conservation area management in Nepal. Last but not least, thanks go to Niru Gurung, Deepak BK, Amrit Adhikari, Anju Khand, Arjun Gynwali and Lalit Thapa for their special support.

Annex

Annex 1: Program Schedule

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| 8:00-8:30 | Registration, Breakfast | Responsibility |
| 8:30-8:45 | Welcome, introduction, objective of the programme | Apsara Chapagain, Chairperson FECOFUN |
| 8:45-9:15 | Key issues for discussion | Dil Raj Khanal |
| 9:15-10:15 | Panel discussion (Each panelist would get 7 minutes for their part to response to the structured questioned posed by the facilitator) <ol style="list-style-type: none">1. Krishna Acharya – DG, DNPWC2. Juddha Gurung – Member Secretary, NTNC3. Ghanashyam Pandey – Activist (Community rights)4. Pasang Dolma Sherpa - NEFIN5. Somat Ghimire- Activist (Park-People issue) | Naya S. Paudel |
| 10:15-10:30 | Tea- break | |
| 10:30-11:00 | Plenary discussion: Questions, comments, views | |
| 11:00-12:00 | Views of political leaders | |
| 12:00-12:30 | Panelist (2-3 minute each) and wrap up | |
| 12:30 | Lunch | |

Annex 2: Key questions to be addressed by panelists

| Panelists | Key questions |
|---|---|
| Ghanashyam Pandey (Global Alliance of Community Forestry- GACF) | <ol style="list-style-type: none"> 1. Why is FECOFUN as CFUG's umbrella organization opposing Gaurishankar Conservation Area (GCA)? 2. What would be your suggestion to manage large tracts of forests /landscape that is beyond the capacity of any single CFUG? 3. Initially, you were against the declaration of GCA; now you talk about adequate rights to people. Is it a pragmatism/maturity? Or because you lost the battle? |
| Juddha Gurung (National Trust for Nature Conservation - NTNC) | <ol style="list-style-type: none"> 1. Why are you interested in GCA? What are its ecological and cultural significance/ other attractions? 2. How do you response to the concerns that NTNC is not following the principles laid down by the international agreements, conventions and best practice guidelines? 3. What is the proposed structure and process through which citizens of GCA can enjoy full rights in shaping the resources management decisions? 4. What kind of collaboration and cooperation do you expect from the government and the local communities and other stakeholders? |
| Somat Ghimire (Community Development Organisation -CDO) | <ol style="list-style-type: none"> 1. How are people in and around PA responding to conservation interventions? Why? 2. Where are the fundamental differences between citizen's demand and government's responses? 3. What are the implications of new democratic republic Nepal in the conservation policies and practice? |
| Pasang Dolma Sherpa (Nepal Federation of Indigenous Nationalities-NEFIN) | <ol style="list-style-type: none"> 1. What are the major issues around protected areas and indigenous people in Nepal? 2. What are the concerns of Indigenous people/women and other marginalized groups of people within the Gaurishankar Conservation Area? 3. How can the policy and legal frameworks better address these issues? 4. What strategies can we adopt to ensure that IP and other marginalized people fully participate and influence conservation policies and practice? |
| Krishna Prasad Acharya (Department of National Park and Wildlife Conservation- DNPWC) | <ol style="list-style-type: none"> 1. What are rationales for expanding CAs? What are biological significances of GCA? 2. What is the government preparedness towards restructuring PA governance in line new democratic Nepal? 3. What are the strategies for addressing historical conflicts between conservation and livelihoods in and around PAs? 4. What are the lessons from different modalities of PA governance and particularly from CA management (ACAP, KCA, BZMP) that help design future PAs in Nepal? How they are included in GCA? |

Annex 3: Name of the Participants

| SN | Name | Organization | Email Address | Phone Number |
|-----|----------------------------|-------------------------|------------------------------|--------------|
| 1. | Ananda Pokharel | NRPP | anandapokharel@yahoo.com | 98510895332 |
| 2. | Apsara Chapagain | FECOFUN | chapagainap@yahoo.com | 9851086515 |
| 3. | Arjun Gyanwali | ForestAction | arjun@forestaction.org | 9849104484 |
| 4. | Ashok Maharjan | Netif | mharjanashok@gmail.com | 9841570350 |
| 5. | Bharati Phatak | FECOFUN | bharatipathak_2006@yahoo.com | 9851115829 |
| 6. | Bhim Prakash Khadka | FECOFUN | khadka_bp@yahoo.com | 9843013062 |
| 7. | Bhola Khatiwada | COFSUN, Nepal | bholacofsun@gmail.com | 9841347450 |
| 8. | Bidya N. Jha | MFSC | bidyanathjha@yahoo.com | 9841409884 |
| 9. | Biku Ram | Akahijhyal | nepalibiku@yahoo.com | 9841950159 |
| 10. | Birkha B. Shahi | FECOFUN | birkha.shahi1@gmail.com | 9841375895 |
| 11. | Bishnu Bdr Nepali | DANAR | nepalibishnu@gmail.com | 9841381904 |
| 12. | Bryan Bushley | University, Hawaii | bushley@hawaii.edu | 9841500958 |
| 13. | Chandra Bdr Gurung | CPN UML | chandrabgrg@hotmail.com | 9841219749 |
| 14. | Chandra Bhandari | | Chandragulmi@yahoo.com | 9841242647 |
| 15. | Chiranjibi Adhikari | CARE,Nepal | chirinjibiA@np.care.org | 9851077068 |
| 16. | Dandu Sherpa | NEFIN | sherpandandu@hotmail.com | 9851014979 |
| 17. | Dil Bdr Khatri | ForestAction | dil@forestaction.org | |
| 18. | Dilli Ghimire | MACEUM | dilli@maceum.org.np | 9841506488 |
| 19. | Dipak B.K | ForestAction | dipak@forestaction.org | |
| 20. | Dolma Tamang | CPN-UML | dtamang63@yahoo.com | 9841513123 |
| 21. | Ganesh Karki | FECOFUN | karkign@gmail.com | 9851119561 |
| 22. | Gocool Tamang | NEFEJ | gocool.thokar@gmail.com | 9841695327 |
| 23. | Gopal Singh Bohara | CA Member (Darchula) | | 9741137431 |
| 24. | Gyan Bdr. Bote | NEFIN | botegyan@hotmail.com | 9847095988 |
| 25. | Jagadish Bhatta | HIMWANTI, Nepal | bhattajagadish@yahoo.com | 9846054899 |
| 26. | Jailab Rai | ForestAction | jailab@forestaction.org | 9841407486 |
| 27. | Jajanath Mishra | | adrmisraj@gmail.com | 9841215226 |
| 28. | Jog Raj Giri | FECOFUN | jograj.giri@gmail.com | 9841375895 |
| 29. | Juddha Bdr Gurung | NTNC | juddhagurung@ntnc.org.np | |
| 30. | Krishna Acharya | DNWPC | Kpacharya1@hotmail.com | |
| 31. | Krishna Murari Bhandari | | kmbhandary@hotmail.com | 9841277596 |
| 32. | Lalit Thapa | ForestAction | | 9841329323 |
| 33. | Madhukar Khadka | NTV | khadkamd@yahoo.com | 9851127147 |
| 34. | Maheshwor Dhakal | DNPWC | maheshwr.dhakal@gmail.com | |
| 35. | Mohan Singh | Gorkha FM | | 9851070344 |
| 36. | Nabin Luintel | Radio Sagarmatha | reporternabin@gmail.com | 9841418560 |

| | | | | |
|-----|----------------------|----------------------|-----------------------------|------------|
| 37. | Narendra M.B Pradhan | WWF, Nepal | narendra.pradhan@wwf.org | 9841473115 |
| 38. | Naya S Paudel | ForestAction | naya@forestaction.org | |
| 39. | Nima Lama | MS | nima.lama@gmail.com | 9851051887 |
| 40. | Niru Gurung | ForestAction | niru@forestaction.org | 9803229391 |
| 41. | Pasang D. Sherpa | NEFIN | pdsherpa2008@gmail.com | 9851101564 |
| 42. | Pasang T. Sherpa | Sherpa Media Grow | pasang.sherpa2080@gmail.com | 9803647889 |
| 43. | Prabhu Budhthoki | | prabhu_35@hotmail.com | 4600879 |
| 44. | Prabin Paudel | NETIF | jitaliparbin@yahoo.com | 9841554241 |
| 45. | Pradeep Paudel | NAVIN | pradeep@navin.org.np | 4229841 |
| 46. | Pragati Chakma | Kathmandu University | Pragati_chakma@yahoo.com | 9849361823 |
| 47. | Prasant Gurung | Dolkha | hbtlp@wlink.com.np | 9831055084 |
| 48. | Radha Wagle | MOFSC | rwagle@mfsc.gov.np | 9849447922 |
| 49. | Rajendra Bhatta | | rajendrazi@yahoo.com | 985127432 |
| 50. | Ram Prakash Danawar | CARE,Nepal | rampiagh180@yahoo.com | 9851108151 |
| 51. | Ramesh Bhusal | The Himalayan Times | toramesh25@gmail.com | 9841482978 |
| 52. | Shant R. Jnawali | (NTNC), | srjnawali@ntnc.org.np | 9851036614 |
| 53. | Somat Ghimire | CDO | ghimiresomat@gmail.com | 9851089829 |
| 54. | Sushil Mainali | NEFEJ | sushil_mainali@hotmail.com | 9851009729 |
| 55. | Tashi Shangmo | CPN UML | tashi3248@yahoo.com | 9851100754 |
| 56. | Tenzing Tashi Sherpa | KSCES | tensing_tashi@hotmail.com | 9849847760 |
| 57. | Vijaya Singh | UNDP | vijaya.singh@undp.org | 9851041653 |

Annex 4: Some photos of interaction

