



**A Study on Law Relating to Wildlife  
Crime and Judicial Practices (With  
Special Reference to Kathmandu  
Valley)".**

**Advocate Kunshang Lama  
2006**

## PREFACE

This research work is for the purpose of intellectual discourse. This effort is made under the initiatives of Wildlife Conservation Nepal (WCN), a noted NGO actively in the realm of the conservation of wildlife. This research report is made under the title of "**A Study on Law Relating to Wildlife Crime and Judicial Practices (With Special Reference to Kathmandu Valley)**".

Wildlife crime comprises all those crimes accused upon the wildlife species. Basically it includes the illegal trade of trophies or specimens of endangered species of wildlife, crime involving native species, which are endangered, or conservation concerns and cruelty to and the persecution of wildlife species. Wildlife crime is a serious threat to the survival or conservation of many endangered species. In other words it lucidly threatens bio-diversity as well as environmental protection and ecological balance. The damages environmental made by wildlife crimes are really irreparable. Environmental protection, preservation of bio-diversity and maintenance of ecological balance is global concern. Thus, the control of wildlife crime is the serious challenge of present day world.

At the last but not least, I would like to express my immense gratitude to Wildlife Conservation Nepal (WCN) for providing me the opportunity of this research work with financial support and to Mr. Shree prakas Upreti (Section Officer of Administrative Court) and Mr. Birendra Budathoki (Section Officer of Supreme Court) without their help this research work could not have accomplished. I would like to express my sincere thanks to Mr. Chhonam Moktan (Lawyer) and Concerned officials of District Forest Offices of Kathmandu, Lalitpur and Bhaktapur, Appellate Court of Patan and the Supreme Court of Nepal who helped me in the process of data collection. Thanking You!

.....

Advocate Kunshang Lama

Researcher

29 October 2006

## ABBREVIATIONS/ACRONYMS

B.S.	Bikram Sambat
CITIES	Convention on International Tread in Endangered Species (Flora and Fauna), 1973
D.D.	Decision Date
e.g.	'Example gratia', for example
ed.	Editor
edn.	Edition
et.al	'et alii'; and others
etc.	Etcetera
i.e.	That is
ibid/id.	'ibidem'; in the same place
IUCN	International Union for Conservation of Nature
NGO	Non-Governmental Organization
No.	Number
NPC	National Planning Commission
NPWCA	National Park and Wildlife Conservation Act, 1973
p.	Page
pp.	Pages
Prof.	Professor
Sec.	Section
V./Vs.	Versus
WCN	Wildlife Conservation Nepal

## LIST OF CASES

<u>S.N.</u>	<u>Parties of case</u>	<u>Decision date</u>
<b><u>Kathmandu:</u></b>		
1.	<i>Government of Nepal Vs. Bhim Bahadur Rai</i>	2060-8-16
2.	<i>Government of Nepal Vs. Bir Bahadur Lama</i>	2059-10-6
3.	<i>Government of Nepal Vs. Chakra Bahadur Gharti</i>	2060-5-26
4.	<i>Government of Nepal Vs. Dambar Bahadur Basnet et.al.</i>	2059-8-23
5.	<i>Government of Nepal Vs. Dambar Bahadur Sirmali et.al.</i>	2059-7-12
6.	<i>Government of Nepal Vs. Dariya Banjara et.al.</i>	2062-9-11
7.	<i>Government of Nepal Vs. Dil Kumar Lama</i>	2059-11-26
8.	<i>Government of Nepal Vs. Dines Tamang et.al.</i>	2059-1-20
9.	<i>Government of Nepal Vs. Dirgharaj Upadhyaya</i>	2058-4-32
10.	<i>Government of Nepal Vs. Getop Lama et.al.</i>	2062-11-24
11.	<i>Government of Nepal Vs. Gyalchhen Tamang et.al.</i>	2061-2-4
12.	<i>Government of Nepal Vs. Gyan Bahadur Tamang</i>	2060-8-22
13.	<i>Government of Nepal Vs. Gyanu Kumar Sunuwar et.al.</i>	2060-10-21
14.	<i>Government of Nepal Vs. Jethi Maya Tamang et.al.</i>	2062-12-15
15.	<i>Government of Nepal Vs. Kaladhar Acharya et.al.</i>	2059-8-16
16.	<i>Government of Nepal Vs. Kanchha Syangtan et.al.</i>	2061-9-7
17.	<i>Government of Nepal Vs. Karma Gurung</i>	2060-9-3
18.	<i>Government of Nepal Vs. Krishna Prasad Gajurel et.al.</i>	2060-10-26
19.	<i>Government of Nepal Vs. Kunchhok Chhudun</i>	2061-10-26
20.	<i>Government of Nepal Vs. Kunchhok Lundup</i>	2061-6-25
21.	<i>Government of Nepal Vs. Mahamad Salam et.al.</i>	2060-7-26
22.	<i>Government of Nepal Vs. Mahila Thokar</i>	2060-4-14
23.	<i>Government of Nepal Vs. Mohamad Battu</i>	2059-5-21
24.	<i>Government of Nepal Vs. Murari Sarki et.al.</i>	2060-10-20
25.	<i>Government of Nepal Vs. Narhari Pradhan</i>	2060-10-23
26.	<i>Government of Nepal Vs. Pasang Chhimbela Lama</i>	2060-2-21
27.	<i>Government of Nepal Vs. Phul Maya Lama et.al.</i>	2060-9-22

28. *Government of Nepal Vs. Puchhima* 2062-8-7
29. *Government of Nepal Vs. Rame Mijar et.al.* 2060-3-9
30. *Government of Nepal Vs. Seiji Kawai et.al.* 2058-9-16
31. *Government of Nepal Vs. Shiva Kafle et.al.* 2060-9-8
32. *Government of Nepal Vs. Sonam Chhiring Negi et.al.* 2062-12-14
33. *Government of Nepal Vs. Uttam Silwal et.al.* 2059-9-5
34. *Government of Nepal Vs. Yakumba* 2061-11-5

**Lalitpur:**

35. *Government of Nepal Vs. Rame Mijar et.al.* 2059-7-12
36. *Government of Nepal Vs. Uttam Silwal* 2060-10-18

**Appellate Court, Patan:**

37. *Government of Nepal Vs. Tendup Lama et.al.* 2058-4-30

**Supreme Court:**

38. *Government of Nepal Vs. Khamba Singh Magar et.al.* 2059-9-12
39. *Government of Nepal Vs. Krishna Neupane et.al.* 2059-10-15
40. *Government of Nepal Vs. Tasi Gurung* 2058-11-62
41. *Government of Nepal Vs. Thakur Prasad Gurau* 2061-6-14

## LIST OF TABLES

<u>Table No.</u>	<u>Title of Tables</u>	<u>Page No.</u>
1	Analysis of wildlife crime cases decided in 2058 B.S. by District forest office of Kathmandu	13
2	Analysis of wildlife crime cases decided in 2059 B.S. by District forest office of Kathmandu	14
3	Analysis of wildlife crime cases decided in 2060 B.S. by District forest office of Kathmandu	18
4	Analysis of wildlife crime cases decided in 2061 B.S. by District forest office of Kathmandu	23
5	Analysis of wildlife crime cases decided in 2062 B.S. by District forest office of Kathmandu	25
6	Analysis of wildlife crime cases decided by District forest office of Lalitpur from 2058 to 2062 B.S.	27
7	Analysis of wildlife crime cases decided by Appellate Court Patan Lalitpur from 2058 to 2062 B.S.	28
8	Analysis of wildlife crime cases decided by Supreme Court from 2058 to 2062 B.S.	29
9	Classification of seized trophies of wildlife in the decided cases of 2058 to 2062	32
10	Bailment in Kathmandu District	33
11	Bailment in Lalitpur District	34
12	Racial distribution of accused in wildlife crimes in Kathmandu	35
13	Racial distribution of accused in wildlife crimes in Lalitpur	35
14	Judgments of Kathmandu District	36
15	Judgments of Lalitpur District	37
16	Classification of determined punishment in comparison to claim on the basis of quantity in Kathmandu District	38
17	Classification of determined punishment in comparison to claim on the basis of quantity in Lalitpur District	39
18	Decisions of the Supreme Court from 2058 to 2062	40
19	Decisions of the Appellate Court from 2058 to 2062	40

## LIST OF CHARTS

<b>Chart No.</b>	<b><u>Title of Charts</u></b>	<b><u>Page No.</u></b>
1	Bailment in Kathmandu District on the basis of cases	33
2	Bailment in Kathmandu District on the basis of accused	33
3	Racial distribution of accused in wildlife crimes in Kathmandu	35
4	Racial distribution of accused in wildlife crimes in Lalitpur	36
5	Forms of Punishment in Kathmandu	37
6	Quantity of punishment in Kathmandu	38

## TABLE OF CONTENT

<u>Title</u>	<u>Page No.</u>
<b>Preface</b>	<b>A</b>
<b>Abbreviations /Acronyms</b>	<b>B</b>
<b>List of Cases</b>	<b>C</b>
<b>List of Tables</b>	<b>E</b>
<b>List of Charts</b>	<b>F</b>
<b>Table of Contents</b>	<b>G</b>

### Chapter-One

#### INTRODUCTION

1.1 General Background of The Study	1
1.2 Statement of the problems	4
1.3 Objective of the study	5
1.4 Scope and limitations of the study	5
1.5 Significance of the study	5
1.6 Methodology of the study	6
1.7 Review of literature	6
1.8 Organization of the study	6

### Chapter - Two

#### LEGAL FRAMEWORK OF WILDLIFE CRIME IN NEPAL

2.1 General backgrounds	7
2.2 Existing Legal Provisions on Criminalization & Punishment in Wildlife Crime	8
2.3 Legal provisions on investigation and prosecution	10
2.4 Bailment process under NPWCA, 1973	10
2.5 Jurisdiction under NPWCA, 1973	10



### **Chapter Three**

#### **ANALYSIS OF WILDLIFE CRIME CASES DECIDED IN THE PERIOD OF 2058 TO 2062 B.S. IN KATHMANDU VALLEY**

3.1.	General backgrounds	12
3.2.	Appraisal of the judgments	31
3.3.	Analysis of seized trophies	31
3.4.	The Bailment of Accused	33
3.5.	Analysis of racial distribution of accused in wildlife crimes	35
3.6.	Analysis of Judgments on purview of forms of judgments and punishment	36
3.7.	Analysis of determined punishment in comparison to the claimed punishment	37
3.8.	Analysis of judgments under appellate jurisdictions	39

### **Chapter Four**

#### **FINDINGS AND SUGGESTIONS**

4.1.1	Findings	41
4.1.2	Suggestions	42
	<b>Selected Reading Materials</b>	<b>45</b>

# Chapter-One INTRODUCTION

## 1.1 General Background of The Study:

Crime is the central and focal notion of the criminal law. Criminal law intends to criminalize those human conducts, which are considered and regarded as against, or contrary to the social interests. For the propose criminal law on the one hand retains criminalization of traditional crimes and on the other hand it define and criminalizes those modern human activities which must be prohibited as per the changed social context or as per the changed social needs and requirements. Thus, wildlife crime falls within the ambit of new concept of crime. To be very specific wildlife crime is the modern crime in comparison to the traditional crime eg. murder, theft etc.

Wildlife crime threatens environmental protection, ecological balance and biodiversity. Protection of environment maintenance of ecological balance and conservation of biological diversity are the major concern of present day global community, which largely fall under the domain of environmental law most of the general principles of environmental law have emerged and evolved under various titles and context over a period of time among them environmental protection, natural conservation and sustainable development are the most significant<sup>1</sup>. Principle of conservation and sustainable use of biological diversity is the *inter alia* general principles of environmental law which emphasizes that conservation and sustainable use of biological diversity is essential for the management of the environmental because every form of life is unique in the natural environment and is to be respect and protected by mankind for the benefit of preset and future generations. These principles focused upon nature as a whole and the interrelationship of all its components. It was first proclaimed in the preamble of the world character for nature, 1982 and later it also appeared in many international treaties and declaration *e.g.* the preamble of the convention on biological diversity 1992.<sup>2</sup>

CITES (Convention on international trade in endangered species) is responsible for setting control over the world's wildlife trade of prevent species from becoming extinct. The

---

<sup>1</sup> Dr. Tara Prasad Sapkota, "General principles of environmental law and their application from global down to national level with reference to Nepal", *Nepal Law Review*, Vol.16 No.1-2, (2003), Nepal Law Campus, p.196.

<sup>2</sup> *Ibid.*

key for achieving these objectives is enforcement of the trade controls but CITES and its 169 members states have conspicuously and constantly doing this task. The principal international control on trade is through CITES, one of the greater success of the international community in terms of its memberships and the measures it has implemented to govern wildlife trade. A considerable range of academic literature has analyzed the working and implementation of CITES, and the broad view of commentators is one of cautious optimism<sup>3</sup>. CITES prescribes a system of joint control, which is split between the states which export and those, which is import wildlife species and products. This legal trade is governed by the use of permits and certificates to trade in particular species and divided between three listings (appendices) depended on the species' vulnerability to trade and its conservation status. CITES prohibits all commercial international trade in plant and animal species (and derivatives) that are threatened with extinction and those are, or may be, affected by trade<sup>4</sup>. CITES regulates approved non-commercial trade in the species and specimens listed in Appendix I to the convention. For these species (including the tiger, all marine turtle species and some orchid and cactus species), the only approved trade would be for scientific or conservation purposes. CITES collaboratively regulates Appendix III species, in a way that allows parties to list specimens as being subject to control in their own jurisdiction so as to enable their protection from over exploitation through cooperation from other parties to facilitate trade controls. CITES regulates, through a system of permits, the trade in other, loss immediately endangered species listed in Appendix II. Where those species are not currently threatened with extinction, but could become so if trade were not strictly regulated.

The illegal trade in wildlife is a serious threat to the survival or conservation of many endangered species. High rewards, and the low risk of detection and punishment, have made the illegal wildlife trade attractive to criminals. There is increasing evidence that more organized crime elements are becoming engaged in the most lucrative areas of the illegal wildlife trade<sup>5</sup>. The profit from wildlife crime is enormous. An important share of this trade is illegal and third only to trafficking in drugs and weapons<sup>6</sup>.

---

<sup>3</sup> Birnie, P and Boyle, A, *International law and the environment*, 2<sup>nd</sup> edn. Oxford University Press, (2002), p.635

<sup>4</sup> As set out in Appendix I and referred to as Appendix I species.

<sup>5</sup> Dr. Ravi Sharma Aryal, "wildlife crime threaten biodiversity," *Annual survey of Nepalese Law*, (2004), Nepal Bar Council, Ktm. p.199

<sup>6</sup> *Ibid* p.196

The international wildlife trade has increased and becomes more lucrative, cash-poor; wildlife rich nations have been unable to control the trade of their wildlife. Forty percent of vertebrate animals that are endangered or threatened with extinction today were brought to that point, in part by the uncontrollable wildlife trade<sup>7</sup>. Rarely are enough funds available for poor countries to study wildlife populations and control wildlife extraction and trade to ensure that it is not causing conservation harm to the species<sup>8</sup>.

There are various types of crimes in the world. One of them is known as wildlife crime. The smuggling of rare and exotic specimen is fuelled by market demand from collector. Collectors for their aesthetic appeal, breeding potential rarity, seek endangered species, especially of tropical birds, reptiles, amphibians and orchids.<sup>9</sup>

Wildlife crimes are those crimes committed upon the wildlife protected by law or CITES listed species and it basically includes these following activities occurred up on wild species protected by law<sup>10</sup>.

- i) Illegal trade in endangered species; the import and export of many threatened species is controlled through the CITES. In Nepal the National Parks and wildlife conservation Act, 1973 control international trade in these species.
- ii) Crimes evolving native species which are endangered or of conservation concern; In Nepal National Parks and wildlife conservation Act, 1973 and forests Act, 1993 and under its different regulation gives protection to wildlife and important habitats and sites crimes against protected species include killing or taking them from the wild (e.g. birds of prey, plants); collecting their eggs or skins for personal collections; trading in them; and taxidermy offenses. People destroying nests and breeding sites' bat roosts and other protected habitats can also be committing offenses.
- iii) Cruelty to and the persecution of wildlife species; crimes include badger baiting and other cruelty cases; and illegal snaring, poaching poisoning and hunting.

Nepal as a responsible member of global community has the equal responsibility to protect the environment, to maintain the ecological balance and to preserve the biological diversity. For the purpose Nepal has ratified the CITES and in Nepal National park and

---

<sup>7</sup> *Ibid* p.195

<sup>8</sup> *Ibid* p.196

<sup>9</sup> *Ibid* p.194

<sup>10</sup> *Ibid* p.196

wildlife conservation Act, 1973 and Forests Act, 1993 has protected the endangered species in relation to the wildlife crimes. Nepal the Himalayan Kingdom is one of the few countries in the world, which is rich in natural resources, cultural heritage, and other components of environment. Over 5400 species of vascular plant (including over 240 species of economic plants and 700 species of medicinal plants), 130 species of mammals, 850 species of birds, 170 species of fish and 600 species of batten flies have already been identified<sup>11</sup>. Presently 26 mammals, 9 Birds, and 3 reptiles have been legally classified as protected animals<sup>12</sup>. It is estimated that Nepal covers 0.1% of the world's land area within which there are 8.5% of birds' species, 4.2% of mammals, 4.2% butterflies, 2.2% of the fishes and 2.2% of the flowering plants of the world<sup>13</sup>.

As pronounced by the NPWCA, 1973, 26 mammal species, 9 bird species, and 3 reptile species are protected<sup>14</sup>. Although NPWCA is the principal piece of legislation for controlling wildlife crime in Nepal, Forests Act 1993 also has a similar responsibility to a large extent. Despite Nepal's obligations under CITES, the poaching and trade of rare wildlife specimens continues to occur. There is ample anecdotal evidence to support this<sup>15</sup>. In Nepal, the seriousness, which is the law and those who implement it attach to wildlife trade offences fails to reflect the potential global threat, they pose to biodiversity. The wildlife crime in Nepal is increasing day by day due to various reasons, which ultimately seriously threatens to the biodiversity. So the effective law and efficient legal apparatus to combat with wildlife crimes are urgent need of the Nepalese society.

## **1.2 Statement of the problems:-**

This study is focused to find out the queries of these following mentioned problems:

- i) What is the concept of wildlife crime?
- ii) Are the Nepalese legal provisions or legal apparatuses are effective and sufficient to cope with the problems of wildlife?
- iii) What are the pros and cons of the Nepalese legal provisions relating to the wildlife crime?

---

<sup>11</sup> Prof. Dr. Amber Prasad Panta, "Environmental law in Nepal: An over view" Annual survey of Nepalese Law, 2000, Nepal Bar Council Ktm. p.1

<sup>12</sup> S.K. Gurung *et.al.* (ed) "*Proceedings of the International Conference on Environment and Law*", Leaders (6-8 March 1992), p.96

<sup>13</sup> NPC/IUCN Nepal, Report on the end of the project, 1998, p.1

<sup>14</sup> See: Schedule 1 of the NPWCA, 1973

<sup>15</sup> *Supra* note No.5, p.202

- iv) Is the judicial response towards the wildlife crime is effective to mitigate the wildlife crime?

### **1.3 Objective of the study:-**

The main objectives of the study can be listed as follows:

- i) To trace out the concept, meaning, historical background and classification of wildlife crime.
- ii) To critically analyses and observe the Nepalese legal provisions relating to the wildlife crime.
- iii) To critically analyses the judicial trends and attitude towards the wildlife crime.
- iv) To identify the shortcomings and lacunas in the legal provisions and judicial responses with regards to the wildlife crime.
- v) To give appropriate suffusions to address and resolve those identified shortcomings in the subject matter.

### **1.4 Scope and limitations of the study:-**

This study is specifically concentrated upon legal provisions and judicial responses on wildlife crime. Major focus of the study is mainly concentrated upon the judicial responses on wildlife crime, and this study is confined within the Kathmandu valley in this regard. So the study only bases upon the decisions of the courts only within the valley i.e. Kathmandu, Lalitpur and Bhaktapur. For this purpose this study only analyses and observes the cases decided from 2058 to 2062 B.S.

### **1.5 Significance of the study:-**

This study critically analyses and observes the Nepalese legal provisions and judicial responses on wildlife crime with special reference to Kathmandu valley located courts and points out major issues and problems with appropriate suggestions so that this study will be helpful for lawmakers, lawyers, judges, law students, teachers and other institutions actively participated in this field and the other persons interested in the realm of subject-matter and all of them will certainly be benefited by the study.

## **1.6 Methodology of the study:-**

This study is primarily based upon doctrinal as well as non-doctrinal methodology, specifically of legal provisions as well of judicial responses of Kathmandu valley located courts on wildlife crime. This research is conducted in library work to some extent it incorporates the fieldwork. The approaches applied in the study include analytical, descriptive, comparative and historical research methods and the informations are collected from the primary sources and secondary ones as per the need and nature of subject matter.

## **1.7 Review of literature: -**

This researcher could not find any systematic research works on this particular topic that's why this may be perhaps the first systematic research work on this subject matter. The researcher has reviewed the similar article written by Dr. Ravi Sharma Aryal on ' wildlife crime threaten biodiversity published in annual survey of Nepalese law 2004, which deals the legal provisions only but this study incorporates Nepalese legal provision along with the judicial response on the subject-matter.

The researcher has consulted the various law books, some other articles, journals, judicial decisions, Acts and statutes and other related literatures enlisted in selected reading materials enclosed here with this research report.

## **1.8 Organization of the study:-**

This research report is divided into four chapters. The first chapter is introductory part of the study, which provides the introduction of the subject matter and the methodology of the study. The second chapter is legal frameworks of the wildlife crime, which traces out the existing legal provisions relating to the subject matter. The third chapter is the judicial trends and attitudes of the subject matter, which shed light on judicial response of Kathmandu valley located courts on the subject matter. The fourth and the last chapter is findings and suggestions which deals with the major findings drawn by the researcher though this study and suggestions made by the researcher to resolve and address the real problem seen in the subject matter. Selected reading materials have been enclosed herewith at the end of this research report.

## Chapter - Two

### LEGAL FRAMEWORK OF WILDLIFE CRIME IN NEPAL

#### **2.1 General Backgrounds:**

National Park and Wildlife Conservation Act (NPWCA), 1973 is the principal piece of legislation for controlling wildlife crime in Nepal and Forest Act, 1993, also has similar responsibility to a large extent. District Forest officers have to resort to the Forest Act, 1993, as well as National Parks and Wildlife Conservation Act, 1973, when the Wildlife trade is required to be implemented beyond the areas of wildlife conservation and national parks. Although Nepal's obligation under CITES, the poaching and trade of rare wildlife specimens continues to occur.

The main Act supposed to implement CITES in Nepal is the National Parks and Wildlife Conservation Act (NPWCA), 1973, which was implemented in 1973 and still serves as the basis for wildlife law enforcement in Nepal. This law appears to be quite comprehensive and it does not provide specific criminalization rather it grossly criminalizes in general.

The NPWCA provides a regulatory approach and aims to conserve endangered specimens of such species. Similarly, it provides for regulations on the national and international trade in specimens of certain endangered species. Pursuant to Section 10 of the NPWCA the hunting of animals contained under Schedule I are protected and their hunting is prohibited except in accordance with the Act. Many of these species are listed under Appendix I of CITES. HMG/Nepal may declare any area of the land as a "National Park, Reserve, Conservation Area or Buffer Zone" and impose the restriction on entry into national parks or reserves<sup>16</sup>. Similarly, it has prohibited; (1) the hunting of animal and birds; (2) the building of any house or hut; (3) the occupation or cultivation of any part of land; (4) the cutting removing, burning of any tree, plant or bush; (5) the mining, quarrying and minerals or stone; and (6) damaging any forest product or land and the use or carry any weapon or poison in the national parks or reserves<sup>17</sup>. Schedule 1 of the Act has listed the animals and birds, which are, regarded as protected animals their hunting is strictly

---

<sup>16</sup> Section 4, *The National Parks and Conservation Act, 1973*.

<sup>17</sup> *Ibid*, Section 5



prohibited. The only exceptions are the man-eating tiger, the rogue wild elephant and animals suffering from chronic disease.<sup>18</sup>

NPWCA is restructured by four different amendments: the first amendment of 1975, the second amendment of 1983, the third amendment of 1989 and the fourth amendment of 1993 are substantial amendments. The fourth amendment of 1993 has brought some new and substantial change in the Act. It has declared buffer zones around the protected areas to provide access to the local people for the management, development and utilization. A provision has been made for user committees for the management and development of buffer zones and protected areas. Similar provisions have been made for the utilization of faunal resources inside the protected areas in harmony with the protected area's management policies.

## **2.2 Existing Legal Provisions on Criminalization & Punishment in Wildlife Crime:**

It provides heavy penal provision on wildlife crime. Any person found guilty of killing or injuring or found guilty of possessing trophies of rhinoceros, tiger, musk deer, wild elephant, clouded leopard, snow-leopard and gaur and any person, with an intention of selling, found guilty of possessing, selling, buying or transferring the trophies of other protected wildlife shall be punishable with a fine not exceeding NRs.1,00,000 subject to a minimum of NRs.50,000 or from 5 years to 15 years imprisonment or both of such fine and imprisonment. A similar provision has been made for any person found guilty of killing or injuring other protected animals. This shall be punishable with a fine not exceeding NRs.75,000 subject to a minimum of NRs.40,000 or from one year to ten years imprisonment or both of such fine and imprisonment.<sup>19</sup>

Under this Act, no one is allowed to collect, obtain or keep any part of a dead animal without a certificate and such goods are prohibited for sale, purchase and disposal. Pursuant to Section 26 of the Act any person illegally killing, wounding, purchasing, selling or transferring a rhinoceros, tiger, elephant, show bear or other prescribed wildlife, or keeping the trophy of, selling or purchasing rhino horn or specimens from any other

---

<sup>18</sup> *Ibid*, Section 10.

<sup>19</sup> Section 9(1)(2), *The National Parks and Wildlife Conservation (fourth amendment) Act, 1993*.

prescribed wildlife will incur a fine from 50,000/- to 1, 00,000/- Rupees or imprisonment for a period form five to fifteen years or both. Although, the present fine and prison sentence was increased by the 1993 amendment to the NPWCA, it is still inadequate in proportion to the profits made.<sup>20</sup> The penal and monetary sanctions for killing or injuring protected birds is still only a fine ranging from five hundred rupees to ten thousand rupees or imprisonment for a period of three months to two years or both.<sup>21</sup>

Likewise, Section 11 of the NPWCA provides that a licence is required to obtain or hunt prescribed animals and birds. An officer is empowered to issue a license, yet he also has the discretion not to do so and does not need to show any reason to the applicant for the license. Further, the government is empowered to cancel the license, if it deems necessary, without showing any reason. The holder of a license must adhere to the prescribed terms and conditions of the license while hunting.

Section 19 of the Act prohibits the selling, barter or transference of the possession of any trophy to another person or trade in a trophy without having a license from a prescribed officer or authority. Any person, who is desirous of exporting or importing a trophy under the prevalent Nepalese law, must obtain a recommendation from the Ministry of Forests and Soil Conservation. Section 29 of the Act requires the license holder to present the trophy to the officer who issued the license within twenty-four hours, excluding period of travel from the place where the trophy was obtained.<sup>22</sup> If the license has been issued on the condition that the whole or any part of the body of animal or bird hunted shall remain the property of the government then the trophy will be deposited by the authority otherwise the authority is required to return the trophy to the license holder after recording the particulars thereof together with a certificate. In the same way, it authorizes rewards to be paid to those who provide information that leads to a conviction. The law provides for powers of arrest and seizure of property. Besides these, National Park and Wildlife Conservation Act (NPWCA), 1973 has, significantly, made the provision that any person who furnishes information which leads to the conviction of any person for killing or wounding endangered wildlife such as rhinoceros, tiger, musk deer, clouded leopard, snow

---

<sup>20</sup> Before the NPWCA, 1993 Amendment, the fine and imprisonment ranged from five thousand rupees to ten thousand Rupees, or one year to three years imprisonment, or both.

<sup>21</sup> Section 26(4), *The National Parks and Wildlife Conservation Act, 1973*

<sup>22</sup> *Ibid*, Section 29

leopard and gaur shall be entitled to a reward not exceeding NRs.50,000/- and for other protected animals shall be entitled to a reward not exceeding NRs.25,000/-.

According to section 27 accomplices are awarded half of the punishment awarded to the principal offender but in the wildlife crime relating to the endangered species like rhinoceros, tiger, musk-deer and elephant accomplices are awarded the equal amount of punishment as to the principal offender.

### **2.3. Legal provisions on investigation and prosecution:**

At least the Ranger or Subedar (non-gazetted first class personnel in army) related with forest or wildlife or non-gazetted first class personnel or assistant sub inspector of police have been empowered to investigate the case on crimes under the NPWCA, 1973 as provided by section 30(1). By the same section the case is sued in the name of office of National Park or conservation or wildlife conservation or related with forest, after the completion of investigation. And the authority may consult the government attorney while registering the case.

### **2.4. Bailment process under NPWCA, 1973:**

The NPWCA, 1973 does not prescribe the separate specific bailment process for wildlife crime cases under it. Consequently, general legal provisions of bailment provided under No. 118 of the chapter on court management of current *Muluki Ain, 2020* is pertinent in this regard. As the wildlife crime threatens biodiversity and the consequences of which is an irreparable environmental or biological damage there is urgent need of separate and specific bailment process for those crime, as it is in the human trafficking law, to control or curb the volume of rampant wildlife crime.

### **2.5. Jurisdiction under NPWCA, 1973:**

According to section 31(1) of NPWCA, 1973 the prescribed court or authority is empowered with the authority of adjudication. As per this legal provision, Rule 38(1) of the National Park and Wildlife Rule, 1974 has prescribed the conservator of national park or conservation if the crime is committed within their territory and to the district forest

officer beyond it. Thus the law has resorted the adjudicating authority to those quasi-judicial bodies. As provided by the section 31(2) such quasi-judicial bodies should adhere with the procedure applicable to the general trial court while adjudicating those cases. Appellate jurisdiction is provided to the Appellate Court under their territorial jurisdiction as per the section 31(3).

❧ - ❧

### Chapter Three

## **ANALYSIS OF WILDLIFE CRIME CASES DECIDED IN THE PERIOD OF 2058 TO 2062 B.S. IN KATHMANDU VALLEY**

### **3.1. General Backgrounds:**

Prohibited conducts relating to Wildlife are criminalized in National Park and Wildlife Conservation Act, 1973 in Nepalese context. Basically, the Act is comprised of two parts as substantive legal provisions as the content of law and the procedural legal provisions to achieve the end of law. Similarly the Act embodies the regulative aspect of law as well as controlling aspects of law. The Act provides several provisions relating to investigation, prosecution as well as adjudication of the cases. The authority of investigation and prosecution is given to the related forest office or national park and the authority of adjudication is given to the conservator in the case within the national park and to the district forest officer in the cases beyond it. In the Kathmandu Valley, there are three district forest offices functioning as quasi-judicial body of trial adjudication i.e. Kathmandu, Lalitpur and Bhaktapur. The Appellate Court is functioning as first appellate level and the Supreme Court is the court of last resort or apex.

The Kathmandu Valley is very crucial transit point for the wildlife crime as in the forms of export and trade of trophies or specimens of wildlife. The Kathmandu valley is facilitated with International airport, national airport and other networking of communications and information. It holds huge number of population, which ultimately facilitates the criminal for their harboring. There are 34 cases decided in Kathmandu, 2 cases in Lalitpur and no cases in Bhaktapur in the five years period of 2058 to 2062 B.S. During the period, the Supreme Court has decided 4 cases and Appellate Court has decided 1 case under the Appellate Jurisdiction.

This study has made different types of analysis on the basis of different categorization of the sources material. Prosecution system, registration of cases, order of bailment, decision of the trial authority and appellate judgments were covered. Tabulation is employed as required to categorization and clarification of the primary data as obtained. The tabulated data are interpreted and analyzed on the basis of existing legal provisions and current practices in this field to deduce the findings as well as suggestions of this study. The study has observed all these cases in many ways as underneath.

**Table No.1**

**Analysis of wildlife crime cases decided in 2058 B.S. by District forest office of Kathmandu**

S N	Name of the case	Case	Brief Account of the Case	Seized objects / testimony	Report	Accused	Castes	Record of the accused before investigation in authority	Charged allegation	Statement in Court	Bailment	Trail judgment	Remarks
1	GoN Vs. Dirgharaj Upadhyaya	Trade of musk-pod	Seized with the musk-pod of musk deer	Musk-pod Weight 25 g.	G	1	Brahmin	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Confession	Bail	Conviction, fine of Rs.50,000/- slapped.	D.D.2058-4-32
2	Government of Nepal Vs. Seiji Kawai <i>et.al.</i>	Trade of insects	Seized with insects while for purpose of trade	Prohibited insects	G	7 (abs con ded- 1)	3 Tamngs, Magar-1, Gurung- 1, Japs 2	Confession	Charged on the crime of Sec.15 and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Confession	Custody -2, Bail -4	Conviction to 4 persons as principal, and confinement of 2 years and fine of Rs.10,000/- slapped. Conviction 2 person as accomplices and slapped for confinement 1 year and fine of Rs.5,000/-	The decision does not refer about 1 accused, which has already produced before the court. D.D.2058-9-16

**Table No.2**

**Analysis of wildlife crime cases decided in 2059 B. S. by District forest office of Kathmandu**

<b>S N</b>	<b>Name of the case</b>	<b>Case</b>	<b>Brief Account of the Case</b>	<b>Seized objects / testimon y</b>	<b>Examina report</b>	<b>No. of Accu sed</b>	<b>Caste of accuse d</b>	<b>Statement by accused before investigatin authority</b>	<b><u>Charged accusation/ allegation</u></b>	<b><u>State ment before Court</u></b>	<b><u>Bail me nt</u></b>	<b><u>Trail judgment</u></b>	<b><u>Remark s</u></b>
1	GoN Vs. Dines Tamang <i>et.al.</i> D.D.2059-1- 20	Carriage and trade of tusk of elephant	Seized with 1 tusk of elephant while waiting the subscriber with whom the price of tusk was fixed.	Tusk of elephant weighing 1.3 K.G.	Original tusk of elephant was identified	5 (1 absco nded)	4 Tmng Rai - 1	Refusal on carriage of tusk and confession on the transaction of trade	Charged on the crime of Sec.19(1) and Punishment of confinement for 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Refusa l on carriag e of tusk and confes sion on the transac tion of trade.	Cus tody	Conviction to 3 persons and individually fine of Rs.50,000/- and acquittal to the 1 person	
2	Government of Nepal Vs. Mohamad Battu D.D.2059-5- 21	Carriage and trade of birds	Seized with 30 different birds while carrying them for the purpose of sale	Peacock - 4, Golden cock (Kalij) -3, Nepali cock (Kalij)-6,	Those birds are prohibit ed to tame and trade	1	Foreign (Indian )	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Confes sion	Cus tody	Conviction of imprisonment of 23 days and fine of Rs.5,000/-	

3	Government of Nepal Vs. Dambar Bahadur Sirmali <i>et.al.</i> D.D.2059-7-12	Carriage and trade of nails and bones of specked leopard	Seized with the nails and bones of specked leopard while carrying them in the pursuit of subscribers for the purpose of trade	Bones of leopard weighing 2 k.g. and nails of leopard-7	Original and nails of specked leopard	3	Sirmali -1, Mijar-2	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Confession	Bail	Conviction, fine of Rs.5,000/- individually to each.	
4	Government of Nepal Vs. Kaladhar Acharya <i>et.al.</i> D.D.2059-8-16	Carriage of gall of bear and musk-pod of deer	Seized with gall of bear and musk-pod of deer	Gall of bear -2 and musk-pod of deer -1	Original	5 (Police-2)	Brahmin-3, Terian-2 (absconded -1)	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Confession	Bail	Conviction to 2 persons and slapped for individually fine of Rs.50,000/- and acquittal to 2 persons	
5	Government of Nepal Vs. Dambar Bahadur Basnet <i>et.al.</i> D.D.2059-8-23	Carriage and trade of horn of rhinoceros	Seized with horn of rhinoceros while carrying for the purpose of trade	Horn of rhinoceros-1	Duplicate/fake	2	Kshetri -1, Taman g-1	Confession-1 Refusal -1	Charged on the crime of Sec.19 (1) and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Confession-1 Refusal-1	Bail	Conviction and individually confinement of 2 years slapped for	The decision has convicted the accused beyond the criminalization by Act.



6	Government of Nepal Vs. Uttam Silwal <i>et.al.</i> D.D.2059-9-5	Carriage and trade of insects	Seized with the 199 insects while carrying them for the purpose of trade	Prohibited insects 199	Original insects	3	Silwal -2, Foreign (Japanes) - 1	Refusal	Charged on the crime of Sec.15 (1) (3) & 19(1) and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Refusal 1	Bail	Conviction to 2 persons as principal, and confinement of 2 years and fine of Rs.10,000/- slapped. Conviction 1 person as accomplice and slapped for confinement 1 year and fine of Rs.5,000/- Imprisonment converted in to the fine as per the No.120 of the Chapter of Court Management of the <i>Muluki Ain</i> on the ground that for the first time crime was committed.
7	Government of Nepal Vs. Dil Kumar Lama D.D.2059-	Carriage and trade of skin of Python	Seized with skin of Python while carrying for the purpose of trade	Skin of Python-1	Original	1	Taman g	Confession	Charged on the crime of Sec.19(1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Confession	Bail	Conviction and fine of Rs.50,000/- slapped

	11-26												
8	Government of Nepal Vs. Bir Bahadur Lama D.D.2059-10-6	Carriage of skin of leopard	Seized with skin of leopard while carrying for the purpose of trade	Skin of leopard -1	Original skin of clouded leopard	1	Taman g	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Confession	Custody	Conviction and fine of Rs.50,000/- slapped	

**Table No.3**

**Analysis of wildlife crime cases decided in 2060 B. S. by District forest office of Kathmandu**

S.N.	Name of the case	Case	Brief Account of the Case	Seized object s / testimony	Examination report	No. of Accused	Caste of accused	Statement of the accused before investigation authority	<u>Charged accusation/ allegation</u>	<u>State ment before Court</u>	<u>Bailment</u>	<u>Trail judgment</u>	<u>Remarks</u>
1	Government of Nepal Vs. Pasang Chhimbel Lama D.D.2060-2-21	Carriage and trade of skin of wildlife animals	Seized with the skins of wildlife animals.	Skins of leopard - 109, skins of unidentified wildlife animal s -14	Original	1	Sherpa	Refusal on accusation and confession on the facts	Charged on the crime of Sec.19 (1) and Punishment of confinement of 2 years and fine of Rs.10,000. as per the Sec. 26(6) of the NPWCA, 1973.	Refusal on accusation and confession on the facts	Custody	Conviction and slapped for the imprisonment of 2 years and fine of Rs.10,000/-	
2.	Government of Nepal	Carriage and trade	Seized with the object	Object resem	Duplicate/fak	2	Sarki-1,	Refusal	Charged on the crime of Sec.19 (1) and Punishment of	Refusal	Custody	Conviction and individually fine of	The decision has convicted

	Vs. Rame Mijar <i>et.al.</i> D.D.2060-3-9	of horn of rhinoceros	resembled with horn of rhinoceros	bled with horn of rhinoceros-1	e		Kshetri-1	accusing each other.	confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	accusing each other.		Rs.6,000/- slapped for.	the accused beyond the criminalization by Act.
3	Government of Nepal Vs. Mahila Thokar D.D.2060-4-14	Carriage of gall of bear	Seized with gall of bear while carrying for the purpose of trade	Gall of bear - 1	Not identified as original or duplicate	1	Tama ng	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Confession	Bail	Conviction, fine of Rs.5,000/- slapped for.	The decision has convicted the accused beyond the criminalization by Act. in the other the punishment downgrades the minimum level of punishment stipulated for
4	Government of Nepal Vs. Chakra Bahadur Gharti D.D.2060-5-26	Carriage of musk- pod of deer	Seized with musk- pod of deer	Musk- pod of deer - 6	Origin al	1	Kshetri-1	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Refusal	Bail	Conviction and slapped for fine of Rs.50,000/-	
5	Government of Nepal	Carriage and trade	Seized with different birds	Parrot -20	Those birds	3	Foreign	Confession	Charged on the crime of Sec.19 (1) and Punishment of	Confession	Custody	Conviction, slapped for the imprisonment of 1	

	Vs. Mahamad Salam <i>et.al.</i> D.D.2060-7-26	of birds	while carrying for the purpose of trade	Muniya -283, Lovebird -10, Rabbit -4, Ginni pig -4	are prohibited to tame and trade		(India n)		confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.			month and fine of Rs.3,000/-	
6	Government of Nepal Vs. Bhim Bahadur Rai D.D.2060-8-16	Carriage and trade of skin of wild life animals (Onta)	Seized with skin of wild life animals (Onta) while carrying for the purpose of trade	Wild life animals (Onta) -36	Original	1	Rai	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Confession	Bail	Conviction, slapped for the imprisonment of 2 years and fine of Rs.10,000/- but imprisonment converted into fine on the ground that for the first time crime was committed	
7	Government of Nepal Vs. Gyan Bahadur Tamang D.D.2060-8-22	Carriage and trade of skin of leopard	Seized with skin of leopard while carrying for the purpose of trade	Skin of leopard -1	Original	1	Tamang	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Confession	Bail	Conviction and fine of Rs.5,000/- slapped	
8	Government of Nepal Vs. Karma Gurung D.D.20609-3	Carriage of nails of leopard	Seized with nails of specked leopard while carrying for	Nails of specked leopard	Original	1	Gurung	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA,	Confession	Bail	Conviction, slapped for the imprisonment of 2 years and fine of Rs.10,000/- but imprisonment converted	

			the purpose of trade	d -335					1973.			into fine on the ground that for the first time crime was committed	
9	Government of Nepal Vs. Shiva Kafle <i>et.al.</i> D.D.2060-9-8	Carriage and trade of horn of rhinoceros	Seized with the object resembled with horn of rhinoceros	Object resembled with horn of rhinoceros-1	Duplicate/fake	2	Kshetri-1, Sunuwar -1	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Confession	Bail	Conviction, slapped for fine of Rs.10,000/- only.	The decision has convicted the accused beyond the criminalization by Act.
10	Government of Nepal Vs. Phul Maya Lama <i>et.al.</i> D.D.2060-9-22	Carriage and trade of skin of rhinoceros	Seized with the with skin of rhinoceros	Skin of rhinoceros-1	Original	3	Tamang-2, Newar-1	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Confession	Bail	Conviction and slapped for fine of Rs.50,000/-	
11	Government of Nepal Vs. Murari Sarki <i>et.al.</i> D.D.2060-10-20	Carriage and trade of skin and bone of specked leopard	Seized with skin and bone of specked leopard while carrying for the purpose of trade	Skin of leopard-1 and bone of leopard	Original	2	Sarki	Confession - 1 Refusal -1	Charged on the crime of Sec.19(1) and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Confession - 1 Refusal -1	Bail	Conviction-1 and slapped for fine of Rs.10,000/- only and Acquittance -1	
12	Government of Nepal	Carriage and trade	Seized with skin of	Skin of	Original	2	Kshetri-1	Confession	Charged on the crime of Sec.19(1) and Punishment of	Confession	Bail	Conviction and slapped for fine of Rs.10,000/-	

	Vs. Gyanu Kumar Sunuwar <i>et.al.</i> D.D.2060-10-21	of skin of leopard	leopard while carrying for the purpose of trade	leopard-1			Sunuwar-1		confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.			only	
13	Government of Nepal Vs. Narhari Pradhan D.D.2060-10-23	Carriage of gall of bear	Seized with gall of bear while carrying for the purpose of trade	Gall of bear - 1	Not identif ied as origin al	1	Newar	Confession	Charged on the crime of Sec.19(1) and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Confession	Bail	Conviction, fine of Rs.5,000/- slapped for.	The decision has convicted the accused beyond the criminalization by Act.
14.	Government of Nepal Vs. Krishna Prasad Gajurel <i>et.al.</i> D.D.2060-10-26	Carriage and trade bone & skull of tiger	Seized with bone & skull of tiger while carrying for the purpose of trade	Bone & skull of tiger- 14	Origin al	2	Brahmin	Confession - 1 Refusal - 1-1	Charged on the crime of Sec.19 (1) and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Confession - 1 Refusal - 1-1	Bail	Conviction-1 and slapped for fine of Rs.5,000/- only and Acquittal -1	

**Table No. 4**

**Analysis of wildlife crime cases decided in 2061 B. S. by District forest office of Kathmandu**

<b>S N</b>	<b>Name of the case</b>	<b>Case</b>	<b>Brief Account of the Case</b>	<b>Seized objects / testimony</b>	<b>Examin report</b>	<b>No. of Accused</b>	<b>Caste of accuse d</b>	<b>Stateme nt of the accused before investiga tion authorit y</b>	<b><u>Charged accusation/ allegation</u></b>	<b><u>Stateme nt before Court</u></b>	<b><u>Bailm ent</u></b>	<b><u>Trail judgment</u></b>	<b><u>Rema rks</u></b>
1	Government of Nepal Vs. Gyalchhen Tamang <i>et.al.</i> D.D.2061-2-4	Carriage and trade of skin of leopard	Seized with the skins of leopard.	Skins of leopard-1	Origin al	4	Taman g-2 Foreig n (Tibeti an) -2	Refusal	Charged on the crime of Sec.19 (1) and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Refusal on accusatio n and confessio n on the facts	Custo dy	Conviction 3 persons as principal and slapped for the imprisonment of 2 years and fine of Rs.10,000/- conviction another as accomplice imprisonment of 1 year and fine of Rs.5,000/- only	
2	Government of Nepal Vs. Kunchhok Lundup D.D.2061-6-25	Carriage and trade of skin of leopard	Seized with the skins of leopard in the condition of without claimant	Skins of leopard-3	Origin al	1	Foreig n (Tibeti an)	Confessi on	Charged on the crime of Sec.19 (1) and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Confessi on	Custo dy	Conviction, 1 year imprisonment and fine of Rs.10,000/-slapped and the imprisonment converted in to fine.	
3	Government of Nepal	Carriage and trade	Seized with the skins of	Skins of musk deer-	Origin al	2	Taman g -1,	Confessi on	Charged on the crime of Sec.19 (1) and Punishment	Refusal	Bail	Conviction, fine of Rs.10,000/- to one and	The punish



	Vs. Kanchha Syangtan <i>et.al.</i> D.D.2061-9-7	of skin of musk deer	musk deer while waiting for the subscribers	1			Newar -1		of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.			fine of Rs.5,000/- to another	ment prescri bed to the accomp lice is incons istent with Sec.27
4	Government of Nepal Vs. पालअजजयप ऋजजगमगल D.D.2061-10-26	Carriage and trade of garland made of bone of elephant	Seized with garland made of bone of elephant	Garland of different sizes - 12 made of bone of elephant	Origin al	1	Foreig n (Tibeti an)	Confessi on	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Confessi on	Custo dy	Conviction, fine of Rs.51,000/- slapped	
5	Government of Nepal Vs. खपफदव D.D.2061-11-5	Carriage and trade of garland made of tusk of elephant	Seized with garland made of tusk of elephant	Garland made of tusk of elephant - 33	Origin al	2	Foreig n (Tibeti an)	Confessi on	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Confessi on	Custo dy	Conviction, fine of Rs.51,000/- slapped	

**Table No. 5**

**Analysis of wildlife crime cases decided in 2062 B. S. by District forest office of Kathmandu**

S N	Name of the case	Case	Brief Account of the Case	Seized objects / testimony	Exami rep	No. of Accused	Cas te of acc use d	Stateme nt of the accused before investiga tion authorit y	<u>Charged accusation/ allegation</u>	<u>State ment before Court</u>	<u>Bail me nt</u>	<u>Trail judgment</u>	<u>Remark s</u>
1	Government of Nepal Vs. Puchhima D.D.2062-8-7	Carriage and trade of musk-pod of musk deer	Seized with the musk-pod of musk deer	Musk-pod of musk deer-5	Original	1	She rpa	Confessi on	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Confessi on	Cus tody	Conviction, fine of Rs.51,000/- slapped.	
2	Government of Nepal Vs. Dariya Banjara <i>et.al.</i> D.D.2062-9-11	Carriage and trade of skin and bones of tiger and leopard	Seized with the skins and bones of tiger and leopard	Skins of tiger-1, Skin of leopard-1 Bones of tiger & leopard-103	Original	4	For eign (Ind ian)	Confessi on	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Confessi on	Cus tody	Conviction 1 person and slapped for the punishment of 5 years of imprisonment, 3 persons acquitted	
3	Government of Nepal Vs.	Carriage and trade of skin	Seized with the skins of leopard while carrying for	Skin of leopard-1	Original	4 (abs con ded -2)	Ta man g-2,	Confessi on-1, Refusal -	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years	Confessi on-1,	Cus tody -	Conviction 2 person as principal and slapped for the punishment of 5	

	Getop Lama <i>et.al.</i> D.D.2062-11-24	of leopard	the propose of trade				Foreign (Tibetian)-1 Kshetri-1	1	and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Refusal-1	General presence-1	years of imprisonment, conviction 1 person as accomplice and slapped for the punishment of fine of Rs.50,000/- and 1 person acquitted	
4	Government of Nepal Vs. Sonam Chhiring Negi <i>et.al.</i> D.D.2062-12-14	Carriage and trade of musk-pod of musk deer	Seized with the musk-pod of musk deer while carrying for the purpose of trade.	musk-pod of musk deer-1	Original	3	Tamang	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Confession	Custody	Conviction, fine of Rs.75,000/- slapped for 1 person and fine of Rs.50,000/- slapped for other two	The punishment prescribed to the accomplice is inconsistent with Sec.27
5	Government of Nepal Vs. Jethi Maya Tamang <i>et.al.</i> D.D.2062-12-15	Carriage and trade of skin of leopard	Seized with the skins of leopard	Skin of leopard-1	Original	2	Tamang-1, Brahmin-1	Confession-1, Refusal-1	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Confession-1, Refusal-1	Custody	Conviction 1 person and slapped for the punishment of fine of Rs.50,000/- and 1 person acquitted	

**Table No. 6**

**Analysis of wildlife crime cases decided by District forest office of Lalitpur from 2058 to 2062 B.S.**

S . N .	Name of the case	Case	Brief Account of the Case	Seized objects / testimony	Examination report	No. of Accused	Caste of accused	Statement of the accused before investigation authority	<u>Charged accusation/ allegation</u>	<u>Statement before Court</u>	<u>Bailment</u>	<u>Trail judgment</u>	<u>Remarks</u>
1	Government of Nepal Vs. Rame Mijar <i>et.al.</i> D.D.2059-7-12	Carriage and trade of bone and nails of leopard	Seized with the bone and nails of leopard	Bones-2 kg. and nails-7 of leopard	Original	2	Mijar	Confession	Charged on the crime of Sec.19 (1) and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Confession	Bail	Conviction, fine of Rs.5,000/- Individually to each.	
2	Government of Nepal Vs. Uttam Silwal D.D.2060-10-18	Carriage and trade of insects	Seized with the insects while carrying them for the purpose of trade	Prohibited insects - 2530	Original	1	Kshetri	Confession	Charged on the crime of Sec.15 and Punishment of confinement of 2 years and fine of Rs.10,000/- as per the Sec. 26(6) of the NPWCA, 1973.	Confession	Bail	Conviction, fine of Rs.10,000/- slapped.	

**Table No.7**

**Analysis of wildlife crime cases decided by Appellate Court Patan Lalitpur from 2058 to 2062 B.S.**

S N	Name of the case	Case	Brief Account of the Case	Seized objects / testimony	Examination report	No. of Accused	Caste of accused	<u>Charged accusation/ allegation</u>	<u>Trail judgment</u>	Appellate Court's judgment	<u>Remarks</u>
1	Government of Nepal Vs. Tendup Lama <i>et.al.</i> D.D.2058-4-30	Carriage and trade of musk-pod of musk deer	Seized with the musk-pod of musk deer while carrying for the purpose of trade.	Musk -pod of musk deer-2	Original	2	Foreign (Indian)	Charged on the crime of Sec.19 (1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Conviction and individually imprisonment of 5 years slapped.	Conviction.	

**Table No.8**

**Analysis of wildlife crime cases decided by Supreme Court from 2058 to 2062 B.S.**

S . N .	Name of the case	Case	Brief Account of the Case	Seized objects / testimony	Examination report	No. of Accused	Caste of accused	Charged accusation/ allegation	Trail judgment	Appellate Court's judgment	Supreme Court's judgment	Remarks
1	Government of Nepal Vs. Tasi Gurung D.D.2058-11-62	Possessing of horn of rhinoceros	Seized with the with horn of rhinoceros	Horn of rhinoceros-1	Original	1	Gurung	Charged on the crime of Sec 18(1) & 19(1) and Punishment of confinement of 15 years and fine of Rs.1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Convicted, fine of Rs.50,000/- slapped	Acquittal	Acquittal	
2	Government of Nepal Vs. Khamba Singh Magar <i>et.al.</i> D.D.2059-9-12	Poaching of wildlife	Seized with 2 guns in the area of jungle	Guns - 2		4	Magar	Charged on the crime of Sec.5(c) and Punishment of confinement of 2 years and fine of Rs.10, 000/- as per the Sec. 26(6) of the NPWCA, 1973.	Conviction to 4 person individually imprisonment of 2 months and fine of Rs.5,000/- slapped.	Acquittal	Acquittal	
3	Government of Nepal Vs. Krishna Neupane <i>et.al.</i> D.D.2059-10-15	Carriage and trade of bones of tiger	Seized with the bones of tiger	Bones of tiger weighing -4 kg.	Original	3	Brahmin -1, Damai -1, Tamang-1	Charged on the crime of Sec.19(1) and Punishment of confinement of 15 years and fine of 1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	Conviction 2 person and slapped for the punishment of the time of custody period of imprisonment, and fine of Rs.50,000/- each.	Acquittal	Acquittal	
4	Government of Nepal	Killing rhinoceros	Seized while snaring for	Horn of	Original	Am	Ambiguous	Charged on the crime of Sec. 19(1) & 27 and Punishment of	Conviction and imprisonment with fine	Convicted	Acquittal	

	Vs. THakur Prasad Gurau D.D.2061-6-14	os and trade of horn of rhinocer os	rhinoceros disclosed the fact of killing of rhinoceros with gun and shale of horn of rhinoceros	rhinoc eros-1	al	bi gu ou s		confinement of 15 years and fine of Rs.1 Lakh as per the Sec. 26(1) of the NPWCA, 1973.	to 2 persons and fine only to 8 persons.			
--	--	---	--	------------------	----	---------------------	--	---	---	--	--	--

### 3.2. Appraisal of the judgments:

From the analysis and evaluation of the judgments made in the cases of wildlife crime, these following shortcomings and lacunas have been seen which are presented in these following sub-heads:

- i) **Haphazard investigation and prosecution:** - Investigating authority has not made exhaustive investigation in all cases. Similarly, prosecuting authority has demanded the different punishment in similar cases. Perhaps, this may be from the lack of ample knowledge of legal proceedings.
- ii) **Avoidance of general judicial procedures:** - General judicial procedures comprises the judicial proceedings of verifications of testimonies and statements of witnesses collected by investigating authority. As per the Section 18 of the Evidence Act, 1974, those are taken as the evidence only when they are verified in the court. But the trial adjudicating body has made this judicial proceeding in no case.
- iii) **Haphazard conviction:** - Adjudicating authority has ignored the examination report of testimony while deciding the case. Consequently accused has convicted even if in the seizure of fake trophies or organs of the wildlife, whereas the law has not criminalized in the case of fake or duplicate trophies of wildlife. Thus, in one hand the judgment seems mechanical while in the other hand judgment unscrupulously label the innocent one as criminal. In some cases prosecuting authority has accused wrongdoer referring wrong legal provision.
- iv) **Haphazard determination of punishment:** - Adjudicating authority has determined the different punishment to different culprits even in the similar crime. In few cases the judgment provides the lesser punishment even than the minimum extent of punishment prescribed by law. Thus the judgment has ignored the law. Discretionary power of determination of punishment does not seem to be duly applied because there is discrepancy in between the determined punishment and criminal conduct.

### 3.3 Analysis of seized trophies: -

During the period, there are several trophies are seized in the cases decided by the trial adjudicating authority is given in the following table.



**Table No. 9**

**Classification of seized trophies of wildlife in the decided cases of 2058 to 2062**

S.N.	Trophies	Kathmandu						Lalitpur						Grand total	Remarks
		2058	2059	2060	2061	2062	Total	2058	2059	2060	2061	2062	Total		
1.	Horn of Rhinoceros	-	1	2	-	-	3	-	-	-	-	-	-	3	
2.	Skin of Rhinoceros	-	-	1	-	-	1	-	-	-	-	-	-	1	
3.	Bone & Tusk of Elephant	-	1	-	2	-	3	-	-	-	-	-	-	3	
4.	Skin of Tiger/Leopard	-	-	4*	2	3*	9	-	-	-	-	-	-	9	
5.	Bone of Tiger/Leopard	-	1	2*	-	1*	4	-	1	-	-	-	1	5	
6.	Nail of Tiger/Leopard	-	1	1	-	-	2	-	1	-	-	-	1	3	
7.	Skin of Musk Deer	-	-	-	1	-	1	-	-	-	-	-	-	1	
8.	Musk' pod	1	1	1	-	2	5	-	-	-	-	-	-	5	
9.	Gall of Beer	-	1*	2	-	-	3	-	-	-	-	-	-	3	
10.	Insects	1	1	-	-	-	2	-	-	1	-	-	1	3	
11.	Birds	-	1	-	-	-	1	-	-	-	-	-	-	1	
12.	Skin of other wildlife	-	-	2*	-	-	2	-	-	-	-	-	-	2	
Total		2	8	15	5	6	36	-	2	1	-	-	3	39	

*\*More than one trophies seized in single case.*

*Source: Table No. 1-6 of this study*

While analyzing 34 cases decided by the Kathmandu Forest Office have several kinds of trophies seized as mentioned in the table No.9. On the basis of presented data in this table several 36 kinds of trophies of wildlife and in the 2 decided cases of Lalitpur, 3 kinds of trophies of wildlife have been seized. The data of Kathmandu have shown that the skin of tigers/leopard have been seized in 9 (26.47%) cases, out of them the 4 cases has decided in 2060. Likewise the 5(14.70%) cases are relating to the musk-pod and 1 (2.94%) case is relating to musk-deer's skin. Similarly the bone of tigers/leopard is concerning to the 4(11.76%) cases and 2(5.88%) cases are relating with nail. Gall of beer, tusk and bone of elephant and horn of rhinoceros are seized in the each 3 (8.82%) cases respectively. In addition to these trophies, the skin of rhinoceros, skin of musk deer, insects and birds are also seized in rest cases. Bone and nails of tigers/leopard and insects have been seized in the 2

cases decided by the Lalitpur Forest Office during the prescribed period. This table shows that tigers/leopard, elephant, rhinoceros and musk deer are seems as endangered wildlife.

### 3.4 The Bailment of Accused:

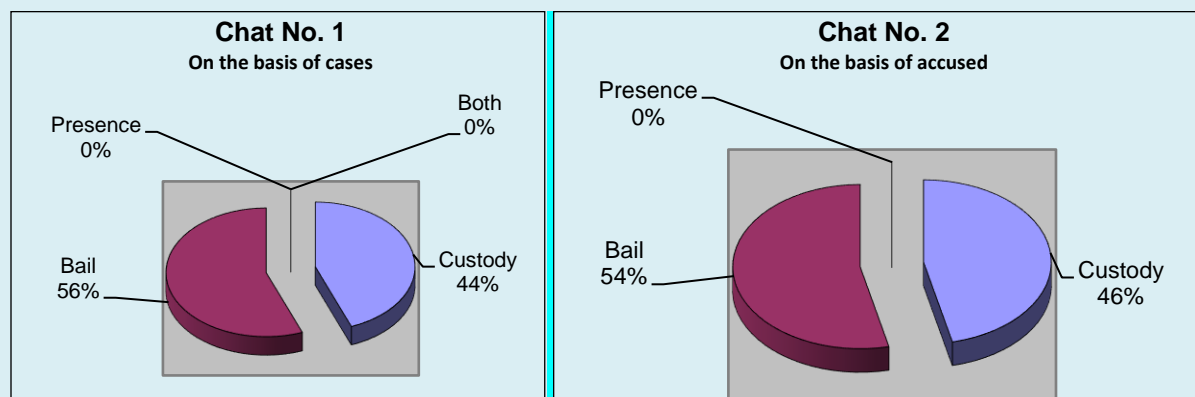
In the time of case registration by prosecutor, the adjudicating authority has to decide whether the presented accused should be taken under custody or release him on bail till the date of decision. It depends on seriousness of crime and the amount of punishment. There are 3 options given to the trail authority in this connection in prevailing law.

**Table No.10**

### Bailment in Kathmandu District

S N	Year	No. of Cases	On the basis of cases								On the basis of accused										Remarks	
			Custody		Bail		Presence		Both		No. of accused	Absconded		Produced before court		Custody		Bail		Presence		
			No.	%	No.	%	No.	%	No.	%		No.	%	No.	%	No.	%	No.	%	No.		%
1	2058	2	1	50.00	1	50.00	-	-	-	-	8	1	12.50	7	87.50	2	28.57	5	71.43	-	-	
2	2059	8	3	37.50	5	62.50	-	-	-	-	21	2	9.52	19	90.48	6	31.58	13	68.42	-	-	
3	2060	14	3	21.43	11	78.57	-	-	-	-	22	-	-	22	100.00	6	27.27	16	72.73	-	-	
4	2061	5	4	80.00	1	20.00	-	-	-	-	10	-	-	10	100.00	8	80.00	2	20.00	-	-	
5	2062	5	4	80.00	1	20.00	-	-	-	-	14	3	21.43	11	78.57	10	90.91	1	9.09	-	-	
Total		34	15	44.12	19	55.88	-	-	-	-	75	6	8.00	69	92.00	32	46.38	37	53.62	-	-	

Source: Table No. 1-5 of this study



**Table No.11****Bailment in Lalitpur District**

S N	Year	On the basis of cases										On the basis of accused										Remarks		
		Custody		Bail		Pres ence		Both		No. of accused	Abscon ded		Produced before court		Custody		Bail		Presence					
		No.	%	No.	%	No.	%	No.	%		No.	%	No.	%	No.	%	No.	%	No.	%				
1.	2058	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2.	2059	1	-	-	1	100.00	-	-	-	-	2	-	-	2	100.00	-	-	2	100.00	-	-	-	-	-
3.	2060	1	-	-	1	100.00	-	-	-	-	1	-	-	1	100.00	-	-	1	100.00	-	-	-	-	-
4.	2061	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5.	2062	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total		2	-	-	2	100.00	-	-	-	-	3	-	-	3	100.00	-	-	3	100.00	-	-	-	-	-

Source: Table No. 6 of this study

The situation of bailment order in the study period is presented in table no. 10 and 11. From above table no. 10, Kathmandu district forest office has decided 34 cases; among them it has kept the accused under judicial custody in 15(44.12%) cases while in the 19(55.88%) cases the accused are released on bail. No accused was released on ordinary presence. While analyzing the table from the viewpoint of number of accused produced before the court, the data show that 75 persons were accused, among them 69(92%) accused were produced before the court while 6(8%) accused were absconded. Among the 69 accused produced before the court, 32(46.38) accused were taken in the custody and 37(53.62%) accused were released on the bail. No person was released on ordinary presence.

From above table no. 11, Lalitpur district forest office has decided 3 cases in this study period; in those cases 3 persons were accused and all of them were produced before the court among them no one was kept under judicial custody all of them were released on bail.

In the process of bailment trial judicial authority have three options available in the legal environment *viz.* to keep the accused in judicial custody, to release the accused on bail or release him/her in ordinary presence. While analyzing the bailment tendency of trial judicial authority in 22(61.11%) cases accused were released on bail, while in rest 14(38.89%) cases accused were kept in the judicial custody. Thus, major tendency of the trial judicial authority is to release the accused on bail, even the case, in which the punishment to the accused is demanded up to the imprisonment of 15 years which is seen contrary to the legal provision of bailment.

### 3.5 Analysis of racial distribution of accused in wildlife crimes:

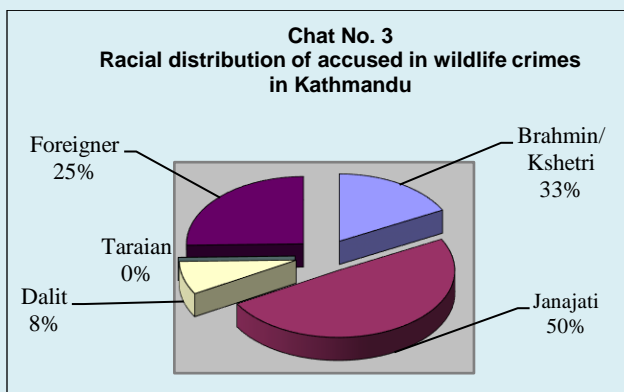
Racial distribution of accused indulged in wildlife crime cases decided by Kathmandu and Lalitpur district forest offices within this study period have depicted in these tables as given below:

**Table No. 12**

**Racial distribution of accused in wildlife crimes in Kathmandu**

S.N.	Year	No. of cases	No. of accused	Racial distribution of accused										Remarks
				Brahmin/Kshetri		Janajati		Dalit		Teraian		Foreigners		
				No.	%	No.	%	No.	%	No.	%	No.	%	
1.	2058	2	8	1	12.50	5	62.50	-	-	-	-	2	25.00	
2.	2059	8	21	5	23.80	10	47.62	3	14.29	-	-	3	14.29	
3.	2060	14	22	5	22.70	11	50.00	3	13.64	-	-	3	13.64	
4.	2061	5	10	-	-	4	40.00	-	-	-	-	6	60.00	
5.	2062	5	14	2	14.29	7	50.00	-	-	-	-	5	35.71	
<b>Total</b>		<b>34</b>	<b>75</b>	<b>13</b>	<b>17.33</b>	<b>37</b>	<b>49.34</b>	<b>6</b>	<b>8.00</b>	<b>-</b>	<b>-</b>	<b>19</b>	<b>25.33</b>	

Source: Table No. 1-5 of this study

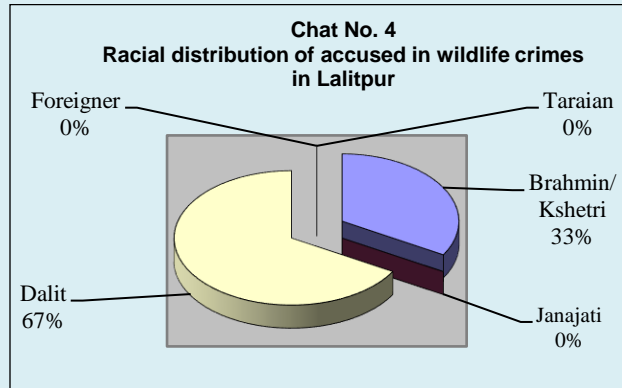


**Table No. 13**

**Racial distribution of accused in wildlife crimes in Lalitpur**

S.N.	Year	No. of cases	No. of accused	Racial distribution of accused										Remarks
				Brahmin/Kshetri		Janajati		Dalit		Teraian		Foreigners		
				No.	%	No.	%	No.	%	No.	%	No.	%	
1.	2058	-	-	-	-	-	-	-	-	-	-	-	-	
2.	2059	1	2	-	-	-	-	2	100.00	-	-	-	-	
3.	2060	1	1	1	100.00	-	-	-	-	-	-	-	-	
4.	2061	-	-	-	-	-	-	-	-	-	-	-	-	
5.	2062	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Total</b>		<b>2</b>	<b>3</b>	<b>1</b>	<b>33.33</b>	<b>-</b>	<b>-</b>	<b>2</b>	<b>66.67</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	

Source: Table No. 6 of this study



From the above tables and charts it is found that in the 34 cases in the Kathmandu district, 75 accused were indulged in wildlife crime. Among them racial distribution are as Brahmin/ kshetri 13(17.33%), Janajati 37(49.34%), Dalit 6(8.00%), foreigners 19(25.33%) and no Terain were found to be involved into the wildlife crime. Similarly, in Lalitpur district two cases were decided within this study period and 3 accused were found to be involved. Out of them 1(33.33%) was Brahmin/kshetri and 2(67.67%) were Dalit. In the aggregation of those table shows that involvement of Janajati in wildlife crimes is highest, then after, in the second position of involvement foreigners are found.

### **3.6 Analysis of Judgments on purview of forms of judgments and punishment:**

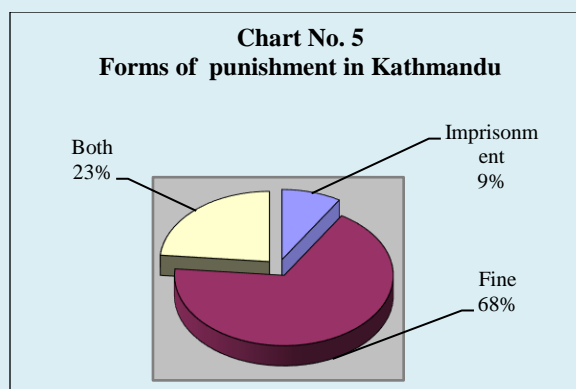
In this study period, the Kathmandu district forest office has made judgments on 34 cases and in the same period the Lalitpur district forest office has decided 2 cases. Classification of judgments and forms of punishment prescribed by them are as bellows:

**Table No. 14**

#### **Judgments of Kathmandu District**

S.N	Year	No. of Cases	Forms of Judgment				Forms of Punishment						Remarks
			Conviction		Acquittal		Imprisonment		Fine		Both		
			No.	%	No.	%	No.	%	No.	%	No.	%	
1.	2058	2	2	100.00	-	-	1	50.00	1	50.00	-	-	
2.	2059	8	8	100.00	-	-	-	-	6	75.00	2	25.00	
3.	2060	14	14	100.00	-	-	-	-	10	71.43	4	28.57	
4.	2061	5	5	100.00	-	-	1	20.00	3	60.00	1	20.00	
5.	2062	5	5	100.00	-	-	1	20.00	3	60.00	1	20.00	
Total		34	34	100.00	-	-	3	8.82	23	67.65	8	23.53	

Source: Table No. 1-5 of this study



**Table No. 15**

### Judgments of Lalitpur District

S.N.	Year	No. of Cases	Forms of Judgment				Forms of Punishment						Remarks	
			Conviction		Acquittal		Imprisonment		Fine		Both			
			No.	%	No.	%	No.	%	No.	%	No.	%		
1.	2058	-	-	-	-	-	-	-	-	-	-	-	-	
2.	2059	1	1	100.00	-	-	-	-	1	100.00	-	-	-	
3.	2060	1	1	100.00	-	-	-	-	1	100.00	-	-	-	
4.	2061	-	-	-	-	-	-	-	-	-	-	-	-	
5.	2062	-	-	-	-	-	-	-	-	-	-	-	-	
Total		2	2	100.00	-	-	-	-	2	100.00	-	-	-	

Source: Table No. 6 of this study

From the above table Kathmandu district forest office has convicted the accused in whole 34(100%) cases. Among them in 3(8.82%) cases only the punishment of imprisonment is determined; in 23(67.65%) cases only the punishment of fine is determined while in 8(23.53%) cases punishment of both the fine and imprisonment is slapped for. Likewise, Lalitpur district office has also convicted the accused in all 2 cases and only the punishment of fine is slapped for. On the basis of these tables trial judicial authorities are inclined to convict the accused in all cases, even the alleged crime does not exist as per the law. So far as the punishment determined for is concerned, the judgments mainly provide the punishment in form of fine only.

### **3.7 Analysis of determined punishment in comparison to the claimed punishment:**

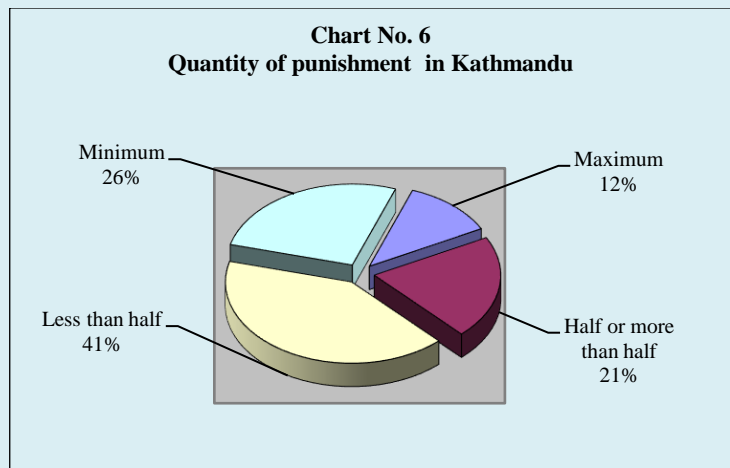
Although the conviction rate is cent percent in both Kathmandu and Lalitpur district but the determination of quantity of punishment to the convicted accused is inconsistent with the claimed punishment. Trial court seems inclined to determine minimum in relation to the claimed punishment. The volume of punishment determined by the court is classified into four groups and has been depicted in the table no 16 and 17 as given below.

**Table No. 16**

**Classification of determined punishment in comparison to claim on the basis of quantity in Kathmandu District**

S.N.	Year	No. of Cases	Quantity of punishment										Remarks
			Maximum		Half or more than half		Less than half		Minimum		Imprisonment converted into fine		
			No.	%	No.	%	No.	%	No.	%	No.	%	
1.	2058	2	-	-	-	-	1	50.00	1	50.00	-	-	
2.	2059	8	1	12.50	1	12.50	2	25.00	4	50.00	1	12.50	
3.	2060	14	3	21.43	3	21.43	6	42.86	2	14.28	2	14.29	In one case fine is determined even less than minimum extent.
4.	2061	5	-	-	3	60.00	2	40.00	-	-	1	20.00	
5.	2062	5	-	-	-	-	3	60.00	2	40.00	-	-	
Total		34	4	11.76	7	20.59	14	41.18	9	26.47	4	11.76	

Source: Table No. 1-5 of this study



**Table No. 17****Classification of determined punishment in comparison to claim on the basis of quantity in Lalitpur District**

S.N.	Year	No. of Cases	Quantity of punishment										Remarks	
			Maximum		Half or more than half		Less than half		Minimum		Imprisonment converted into fine			
			No.	%	No.	%	No.	%	No.	%	No.	%		
1.	2058	-	-	-	-	-	-	-	-	-	-	-	-	
2.	2059	1	-	-	-	-	-	-	1	100.00	-	-	-	
3.	2060	1	1	100.00	-	-	-	-	-	-	-	-	-	
4.	2061	-	-	-	-	-	-	-	-	-	-	-	-	
5.	2062							-	-	-	-	-	-	
Total		2	1	50.00	-	-	-	-	1	50.00	-	-	-	

Source: Table No. 1-5 of this study

Among the 34 decided cases of Kathmandu district maximum punishment is determined Only in 4(11.76%) cases, half or more than half of the claimed punishment is determined in 7(20.59%) cases, less than half of the claimed punishment is determined in 14(41.18%) cases and minimum punishment is awarded in 9(26.47%) cases. In the case of Mahila Thokar (2060) the court has awarded the punishment of fine of Rs. 5000/- only which is extremely lesser than the minimum extent of punishment provided by law. The court has awarded minimum or less than half of the claimed punishment in 23(67.64%) cases. Thus, trends of the court is clearly seen that it is inclined to convict in all cases even the law has not criminalized but while determining the punishment it is inclined to award nominal punishment. Adjudication authority has entertained the discretionary power to convert the awarded imprisonment into fine in 4(11.76%) cases. Between all decided 2 cases of Lalitpur district, in 1(50%) case maximum punishment has been awarded while in the other 1(50%) case minimum punishment has been awarded.

**3.8 Analysis of judgments under appellate jurisdictions:**

First appeal jurisdiction has prescribed to the Appellate Court as provided by law. Since the scope of this study is confined within the Kathmandu valley the Appellate Court of Patan is pertinent in this regard. The final appeal jurisdiction resorts on The Supreme Court



of Nepal. The judgments made under appellate jurisdiction by those both courts are depicted in these following tables.

**Table No. 18**  
**Decisions of the Supreme Court from 2058 to 2062**

S N	Year	No. of cases		Trail judgments									Appellate Court				Supreme Court				Remarks	
				Conviction		Acquittal		Punishment					Conviction		Acquittal		Conviction		Acquittal			
				No	%	No	%	Imprisonment		Fine		Both		No	%	No	%	No	%	No		%
								No	%	No	%	No	%									
1	2058	1	1	100.00	-	-	-	-	1	100.00	-	-	-	-	1	100.00	-	-	1	100.00		
2	2059	2	2	100.00	-	-	-	-	1	50.00	1	50.00	-	-	2	100.00	-	-	2	100.00		
3	2060	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
4	2061	1	1	100.00	-	-	-	-	1	100.00	-	-	1	100.00	-	-	-	-	1	100.00		
5	2062	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
Total		4	4	100.00	-	-	-	-	3	75.00	1	25.00	1	25.00	3	75.00	-	-	4	100.00		

Source: Table No. 8 of this study

**Table No. 19**  
**Decisions of the Appellate Court from 2058 to 2062**

S.N.	Year	No. of cases		Trail judgments									Appellate Court				Remarks	
				Conviction		Acquittal		Punishment					Conviction		Acquittal			
				No.	%	No.	%	Imprisonment		Fine		Both		No.	%	No.		%
								No.	%	No.	%	No.	%					
1.	2058	1	1	100.00	-	-	1	100.00	-	-	-	-	1	100.00	-	-		
2.	2059	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
3.	2060	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
4.	2061	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
5.	2062	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total		1	1	100.00	-	-	1	100.00	-	-	-	-	1	100.00	-	-		

Source: Table No. 7 of this study

Within the study period, the Supreme Court has decided 4 cases. Among them the Supreme Court has quashed the appellate decision in 1(25%) case and upheld the appellate decisions in rest 3(75%) cases. In all those 4 cases the Supreme Court has acquitted the accused. In this period Appellate Court Patan has decided only one case in which it has upheld the trial judgment.



## Chapter Four

### FINDINGS AND SUGGESTIONS

#### **4.1 Findings:**

Major findings, drawn by this researcher through this study can be listed as follows:

1. There is no separate branch of wildlife crime to investigate and prosecute the rampant wildlife crime.
2. In all related legal provisions of punishment provided by the NPWCA, 1973 punishment of imprisonment is taken as the optional one even to the serious crimes.
3. Criminalization of wildlife crime in NPWCA, 1973 is largely in general, which has ultimately caused the hindrance in the process of proper implementation of law.
4. NPWCA, 1973 provides the deciding authority high latitude on discretionary power to determine the punishment, and it resorts the jurisdiction of adjudication on quasi-judicial body as district forest officers or conservator of the national park and wildlife conservation area.
5. There is no specific Bailment process in relation to the wildlife crime so the general bailment process of law is being attractive in them, which has affected the effective enforcement of law in combating with rampant wildlife crime.
6. Section 25 of the NPWCA, 1973 has not been implemented which provides due rewards to the detector who facilitates the seizure of testimony (i.e. trophies or organs of wildlife) and offender.
7. Yet enforcement of law to combat wildlife crime is grossly inadequate worldwide.
8. The profits from global wildlife trade are enormous and third only to trafficking drugs and weapons. Nevertheless NPWCA, 1973 doesn't allow the confiscation of assets of those engaged in the organized wildlife trade.
9. International wildlife trade is increasing day by day and it has become more lucrative, but the maximum penalty of two years imprisonment currently available under Sec.26 (6) of NPWCA, 1973 fails to act as deterrent law.

10. Adjudicating authority has ignored the general judicial procedures such as verification of proofs and statement of witnesses collected by the investigation authority.
11. Adjudicating authority has ignored the examination report of testimony while deciding the case. Consequently accused has convicted even if in the seizure of fake trophies or organs of the wildlife, whereas the law has not criminalized in the case of fake or duplicate trophies of wildlife. Thus, in one hand the judgment seems mechanical while in the other hand judgment unscrupulously labels the innocent one as criminal.
12. In few cases the judgment provides the lesser punishment even than minimum extent of punishment prescribed by law. Thus the judgment has ignored the law.
13. Discretionary power of determination of punishment does not seem to be duly applied because there is discrepancy in between the determined punishment and criminal conduct.
14. The accused has been released on bail even in the case claimed for the punishment of 15 years imprisonment, which violates the provisions provided by the no.118 of Chapter on Court Management of *Muluki Ain*.

## **4.2 Suggestions:**

Wildlife crime is increasing day by day in Nepal. The researcher has made following suggestions on the basis of major findings drawn by the researcher through this study. The suggestions have been presented as underneath to address and resolve the real problems or shortcoming seen in the subject matters, which ultimately facilitates to improve wildlife crime situation in Nepal.

1. Wildlife crime branch (having the legal as well as biological technicians) need to be established in Nepal as in India in order to address to issue of the seriousness of wildlife trade offenses and offenders.

2. All the punishment of imprisonment provided by NPWCA, 1973 should be altered as compulsory one to control wildlife crimes effectively.
3. The legal provisions of NPWCA, 1973 needs to be so designated or altered that the Criminalization of law must be specific and specified so as to enable affective implementation.
4. In the one hand high latitude on discretionary power to determine the punishment provided by law should be reduced and on the other jurisdiction of adjudication in wildlife crime would be batter or proper to remove from the authority to which the law provides, and it should be provided to the general law courts.
5. Specific bailment process, as in the law on crime of human trafficking, is needed to cope with the increasing crime of wildlife effectively.
6. Sec.25 of the NPWCA, 1973 should be implemented i.e. the detector who facilitates the seizure of testimony and offender should be due rewarded as provided by law, for the effective enforcement of law.
7. Ways to strengthen international partnerships charged with combating the illegal wildlife trade should be considered. This should include ways of ensuring that national and international regulatory frameworks are used to enable a more consistent approach to the global challenge of organized illegal wildlife trade. One way would be to setup (through CITES and other international bodies) regular seminars/workshops for leading enforcement and investigating organizations to share information, intelligence and best practices in combating the illegal wildlife trade.
8. Judicial authority should be empowered to confiscate the assets of those found guilty or engaged in the organized wildlife trade.
9. The maximum penalty of two years imprisonment currently available under Sec.26 (6) of NPWCA 1973 should be increased at least up to penalty of 5 years imprisonment, so as to penalize the offender as the deterrent criminal law.
10. General judicial process of general law courts, such as verification of proofs and statement of witnesses collected by the investigation authority, must be accomplished in the process of adjudication.
11. Adjudicating authority must base the examination report of testimony as determinant proof while deciding the case and one must not be labeled as criminal for his act beyond the criminalization by the law.

12. Judgments must be with accordance to the law. Punishment determined by the judgment must be consistent with law.
13. There must be consistency in between the determined punishment and criminal conduct, and the discretionary power of determining the punishment should be applied with judicial mind.
14. Adjudicating authority must strictly adhere the bailment process provided by No.118 of Chapter on Court Management of *Muluki Ain* till enacting the separate bailment process under concerned Act.



## SELECTED READING MATERIALS

### Primary Sources:

- *The Convention on International Trade in Endangered Species (Flora and Fauna), 1973*
- *The Environment Protection Act, 1996*
- *The Evidence Act, 1975*
- *The Forest Act, 1993*
- *The Government Cases Act, 1992*
- *The Judicial Administration Act, 1991*
- *The Muluki Ain, 2020 B.S.*
- *The National Parks and Conservation Act, 1973*
- *The National Parks and Conservation Rule, 1974*

### Secondary Sources:

- Birnie, P and Boyle, A, *International law and the environment*, 2<sup>nd</sup> edn. Oxford University Press, Oxford (2002)
- Gurung, S.K. et.al. (ed.) "*Proceedings of the International Conference on Environment and Law*" (6-8 March 1992), Leaders
- NPC/IUCN Nepal, *Report on the end of the project*, (1998)
- Panta, Amber prasad, (Prof. Dr.), "*Environmental law in Nepal: An overview*" Annual Survey of Nepalese Law, (2000), Nepal Bar Council Ktm.
- Sapkota, Tara Prasad (Dr.) "*General principles of environmental law and their application from global down to national level with reference to Nepal*", Nepal Law Review vol.16 No.1-2 (2003), Nepal Law Campus.
- Sharma Aryal, Ravi (Dr.), "*wildlife crime threaten biodiversity*" Annual Survey of Nepalese Law, (2004), Nepal Bar Council Ktm.