



*Land First*

Journal of Land and Agrarian Reforms

Volume 9, November 2009

Community Self Reliance Centre (CSRC)



**Editorial Team**

Sagar Raj Sharma, PhD  
Jagat Basnet  
Jagat Deuja  
Chahana Chitrakar

*L* and First

**Journal of Land and Agrarian Reforms**

Volume 9, November 2009

© Community Self Reliance Centre (CSRC)

**Published**

November 2009

**Published by**

Community Self Reliance Centre

**Layout and Design**

M Phuyal / Kumar Thapa

## Editorial

If one turned the pages of history of almost any country in the world, one would see that, in many cases, land reform has taken place only after major political upheavals in that country. Japan, Mexico and Vietnam, to name a few, implemented land reforms after some major political changes occurred in these countries.

Nepal too has gone through a major political upheaval in the recent years. A political transformation from a monarchy to a democratic republic system has taken place, thanks to a popular 'people's revolution' in 2006. The Constituent Assembly (CA) members are now in the midst of debating and drafting a new constitution, and there are many crucial issues to be dealt with. Needless to say, land reform is one of the most hotly contested issues, but one cannot help but feel that it is not in the priority list. Other issues, which have a more 'political' flavor and are more visible in nature, are getting more attention and media coverage, and the issue of land reform, perhaps because of its complexity, is yet again being sidelined. However, one must not forget that there are thousands of poor farmers and landless groups eagerly looking forward to a constitution that properly and justly addresses their concerns, and they feel that this is a historic opportunity to include provisions for a genuine land reform in the constitution.

In this context, and realizing the fact that the drafting of the constitution is about to enter its final phases, we felt that it would be appropriate to choose 'Land and Constitution' as the broad theme of this issue. We hope that the issues raised and the data provided in the articles will be valuable reference to the drafters of the constitution. Our readers will also notice that the format of this journal and the nature of its contents have been slightly changed in comparison with the earlier issues of Land First. The articles published in this issue are more research-based than the earlier ones, and we shall attempt to include similar articles in the forthcoming issues as well. The support you, including the

peasants and pro-farmer groups, have given us for all these years for our advocacy for a just land reform in this country has provided us with the strength to continue working on this issue even more vigorously. We felt that adding academic research into our efforts will not only add value to the work we have already been doing for long, but will also provide much needed academic insights to the ongoing debate of land reform.

We have thus chosen only those articles that are research-based and have a connection with the constitution in one way or another. The first article provides the most recent empirical data on land related issues from 16 VDCs across Nepal. At a time when most of the ongoing debates and discourses on land reform are ideologically guided and misinformed, this article provides the much-needed data from the field. We leave it to the researchers, academicians, and the concerned ones to analyze the data. The next two articles are the outcomes of extensive high-level studies conducted in different ecological belts of the country. The authors have not only followed a scientific methodology to conduct these studies, but have also attempted to link their findings with relevant theories. These three articles focus directly on Nepal, and give us a picture of the actual situation of the poor peasants and excluded groups at local levels. The next two articles give us more of a 'global' flavor. The fourth article, in particular, looks at the case of Bolivia and its constitution and gives a comprehensive analysis of the land rights movement in that country. Finally, the final article in this issue has attempted to look at the constitutions of some of the developing countries around the world that went through a similar phase Nepal currently is undergoing, and has highlighted the land-related articles in them, which could be very useful to the constitution drafters of this country. Nepal's new constitution is being drafted as we write this editorial, and we have attempted to provide here some potential reference materials to the concerned stakeholders. We leave it to our readers to judge the usefulness of these articles.

We look forward to the comments and suggestions from you at [landrights@csrcnepal.org](mailto:landrights@csrcnepal.org)

The Editorial Team  
November 2009

## Inside

The State of Land Relations in Nepal: Preliminary Findings of a Recent Research .....	1
<i>- Suresh Dhakal</i>	
Inclusive Land Policy and Human Security in Post-Conflict Situation: A Study of Parsauni and Pratapur VDCs of Nawalparasi District .....	18
<i>- Lisha Shrestha</i>	
Landlessness and Livelihood in Nepal .....	30
<i>- Purna Nepali</i>	
Land and Territory in the New Constitution of Bolivia .....	43
<i>- Esteban Sanjines Delgadillo</i>	
Constitutional Approaches to Land Reform: Lessons from Other Developing Countries .....	57
<i>- Ashraf Hussein</i>	
Annex: Land and Agrarian Reform Articles in the Constitutions of Some Selected Countries .....	62

# The State of Land Relations in Nepal: Preliminary Findings of a Recent Research\*

■ Suresh Dhakal<sup>++</sup>

## Introduction

This paper presents some of the preliminary findings of a recently carried out research on the forms and patterns of land holdings, ownership, and relations in contemporary Nepal. The research covered 16 Village Development Committees (VDCs) from 16 districts, representing three ecological zones and five development regions<sup>\*\*</sup>. Out of the 16 VDCs, eight VDCs were from hill and mountain districts, while eight were from Tarai and Inner Tarai districts. Household census was conducted in the selected VDCs using a structured questionnaire in March and April 2009; and 10 percent of the sample households (HH) were selected

through a systematic random sampling for additional information. Several other techniques were utilized to collect qualitative information in subsequent field visits. However, in this paper, only the part of the quantitative information generated through the research is presented<sup>@</sup>.

Hence, the paper is a descriptive one, based on the recently carried out research, and aims to provide a fresh dataset to the researchers, policy makers and the rights activists with regards to the existing land holding pattern and land relations with some socio-demographic characteristic features of the study population.

---

\* This paper is one of the secondary outcomes of the study carried out by CSRC; therefore, all credits go to CSRC and the entire study team. I appreciate their hard work and patience. I am also thankful to Dr Amod Poudyal and Kala Rai for their contribution during the study period. I am thankful to the editors of Land First for their editorial support. I am alone responsible for the shortcomings and errors in the interpretations, if any, in this paper.

<sup>++</sup> Mr. Suresh Dhakal is a social anthropologist teaching at the Central Department of Anthropology and Sociology in Tribhuvan University.

<sup>\*\*</sup> The 16 districts covered by the research were Dadeldhura, Baitadi, Bajura, Kailali, Bardiya, Jumla, Dang, Kapilvastu, Nawalparasi, Parbat, Rasuwa, Sindupalchok, Siraha, Udaypur, Sankuwasabha and Jhapa.

<sup>@</sup> The main report of the research containing all the data/information gathered during the study with analytical chapters is submitted to CSRC. Supplementary to this, additional papers with more discussions and analysis are coming up as follow-up papers.

### Total Households and Population

The total HH covered by this study was 25,199 and the total population was 143,125. The HH coverage of Tarai/Inner Tarai and Hill/Mountain were 18,473 HH (73.3%) and 6726 HH (26.6%) respectively. Population distribution were 105,302 (73.6%) for Tarai/Inner Tarai and 37,823 (26.4%) for Hill/Mountain.

### Female-Headed Households

Household head, for the purpose of this study, was defined as the one who did most of the decision-making, who was not away from home for long periods, and took care of the primary responsibilities to run the everyday activities of the family during the study period. Therefore, household head may not necessarily be the eldest person - male or female - of that particular family. The following table presents the number of female-headed households.

This study (see Table 1) recorded 12.2 percent households as female-headed households, which is quite low compared to the national average (19.6%). However, during the study period, it was observed that most of the respondents considered

the eldest male member as the household head, even when he was dependent on the rest of his family due to his age/health condition or was living in a foreign country for years. This fact indicates that the actual female-headed households may be more than what is recorded by this study (i.e., 12.2%). (see Table 1)

**Table 1: Gender of Household Head**

Gender	Frequency	Valid %	National Average (%)
Male	22136	87.8	81.4
Female	3063	12.2	19.6
Total	25199	100.0	100.0

Source: Fieldwork, 2009; CBS, 2001

### Caste/Ethnic distribution

Distribution of population according to social categories such as caste and ethnicity by and large represented the national scenario, as shown in Table 2. The table illustrates the household and population distribution according to caste/ethnicity and further compares the data with the national average. (see Table 2)

The largest group among all the categories was the group of Chettri/Thakuri, which was 21.2 percent, which matches with the

**Table 2: Distribution of HH and Population according to Caste/Ethnicity**

Caste/Ethnic Groups	HH Frequency	%	Population Frequency	%	National Average (%)
Tarai Ethnic	4924	19.5	29107	20.3	9.8
Hill Ethnic	4360	17.3	23231	16.2	27.4
Dalit Tarai	1006	4.0	5491	3.8	4.0
Dalit Hill	2713	10.8	15428	10.8	10.8
Chettri/Thakuri	5288	21.0	30350	21.2	21.0
Brahmin Hill/Sanyasi	4365	17.3	24066	16.8	17.3
Brahmin Tarai	184	0.7	1129	0.8	1.9
Tarai Middle Class	1374	5.5	8299	5.8	12.9
Others	985	3.9	6024	4.2	5.3
Total	25199	100.0	143125	100.0	100.0

Source: Fieldwork 2009, and CBS, 2001

national average, i.e., 21 percent. Tarai ethnic groups came second with 20.3 percent, which is fairly higher than the national average, i.e., 9.8 percent. It was so because the sample districts in the Tarai/Inner Tarai were the districts with higher presence of Tharu, a Tarai ethnic group. On the other hand, percentage of hill ethnic groups was lower (16.2%) compared to their national average (27.4%) for the same reason. Tarai Middle Caste is also less (5.8%) compared to their national average (12.9%), because of the fact that most of the Tarai districts were from West, where the presence of the middle caste groups are low.

For rest of the groups, the population composition in terms of caste and ethnicity was very much in line with the national average. Therefore, this statistical resemblance allows us to claim that the sample population can broadly represent the national picture as well.

### Religious Distribution of the Population

One of the criteria of the selection of the study sites was to select those VDCs which could eventually represent the diversity in all aspects. This was equally true in the case of religious distribution of the population. The distribution of the population according to religion is presented in Table 3.

In terms of population distribution, we can see the domination of Hindus over other groups, which was even higher than their national share. As can be seen from the table, 90.6 percent were Hindus, 10 percent more than their national average, consequently resulting into a low representation of other groups compared to their respective national averages. Nevertheless, Christians accounted for 0.1 percent more than their national average.

### Types of Houses

The types of houses are categorized here according to their construction. For example, houses made of bricks or stonewall and wooden planks are considered as *pakki* (permanent) types, whereas the houses with walls made of mud and daub, tree branches, mud-bricks, etc. are considered as *kacchi* (flimsy) types. Similarly, if the roofs are of tiles, corrugated zinc, RCC, RBC, then they are considered as *pakki* roofs, while thatched roofs are considered as *kacchi* roofs. When a house has *pakki* walls and *pakki* roofs, then that is considered a *pakki* house. On the contrary, if a house has a *kacchi* roof and *kacchi* walls, then, that house is a *kacchi* house. But, if a house has either a *kacchi* roof and *pakki* wall or a *pakki* roof and *kacchi* wall, that house is considered as *kacchi-pakki* house. Table 4 presents the different types of the houses according to the construction pattern.

**Table 3: Distribution of Population According to Religion**

Religion	HH Frequency	%	Population Frequency	%	National Average (%)
Hindu	22813	90.5	129674	90.6	80.6
Buddhist	1644	6.5	8838	6.2	10.7
Muslim	324	1.3	2436	1.7	4.2
Christian	176	0.7	912	0.6	0.5
Kirat	213	0.8	1083	0.8	3.6
Other	29	0.1	182	0.1	0.4
Total	25199	100.0	143125	100	100.0

Source: Fieldwork 2009, and CBS, 2001

**Table 4: Distribution of Houses According to their Types**

Type of House	No. of Houses	%
Pakki	7183	28.5
Kacchi/Pakki	8536	33.9
Kacchi	8957	35.6
Rented house	460	1.8
Others	40	0.2
Total	25176	100.0

Source: Fieldwork 2009

The table shows that, 35.6 percent were *kacchi* and 28.5 percent were *pakki* houses, while 33.9 percent were *pakki-kacchi* houses. Rented houses and open or tent-like shelters are not categorized under these types.

#### Ownership of the House Built Land

Approximately, two-thirds of the total HH (66.1%) had ownership of the land where their houses were built, and one-third of them did not have full ownership of the land where they had built their houses. Table 5 presents the different types and ownership or holdings of the land where they had built their houses.

As it becomes clear from table 5, one-third of the families are still deprived of the ownership rights of the land where they have been living for years. One of the issues raised by those families was to change the present holding

**Table 5: Ownership of the Land of House Built Land**

Land type	No. of HH	%
Own Land	16632	66.1
Public Land/ unregistered land	4380	17.4
Landlord's land	770	3.1
Relatives' land	814	3.2
Guthi	772	3.1
Gaublock	1728	6.9
Birta	23	0.1
Ankanda/ Ukhandanda	39	0.2
Total	25158	100.0

Source: Fieldwork 2009

into their ownership.

#### In-migration to the Current Locations of Residence

The Nepal Labour Force Survey (NLFS) II has estimated that about 33 percent of the population of all ages had migrated to their current location (CBS, 2009) and 80 percent of the total migrants were from rural areas (Ibid.). Most of the migratory movements within the country have taken place with regards to the search for a better life. From every migration, migrants desire to have a better life than the previous one. This study also looked into the migration history of the households in the location of destinations, which is illustrated In Table 6.

**Table 6: Years Living in the Current Location of Residence**

Years	Frequency	%	In Hill/Mountain	In Tarai
1-10 Years	4982	19.8	5.9	24.9
11-20 Years	3466	13.8	3.5	17.6
21-30 Years	2678	10.7	2.1	13.8
31- 40 Years	2179	8.7	0.9	11.5
41-50 Years	454	1.8	1.2	2
51-60 Years	230	0.9	0.7	1
61 years and above	11128	44.3	85.7	29.2
Total	25117	100.0	100.0	100.0

Source: Fieldwork, 2009



Among the Tarai dwellers, 56.3 percent had migrated to the present place of residence within the last 30 years, while 85.7 percent of the HH in Hill/Mountain had been living in the present place for more than 61 years, compared to only 29.2 percent in Tarai.

This clearly shows that there had been north to south or Hill to Tarai migration trend over the past decades. Tarai thus has remained a popular and common destination for the hill migrants. However, migration from south, i.e. cross-border migration has also been taking place during the last decades.

### Location of Origin of the Migrants

Nearly one-third of the migrants had actually come from within the districts, i.e. short distance migration. Actually, 12 percent of them stated that they moved within the same VDC, mostly in the process of family separation. These types of migration take place when people from the hilltop begin to settle down in the lower part of the village where soils are fertile and other facilities are available. Neo-locals usually tend to set up in the nearby areas where they have their parental land and property as well as their social networks.

**Table 7: Place of Origin**

Location of Origin	Frequency	%
VDC	3031	12.4
Within District	4988	20.3
Out of District	8105	33.0
Out of country	581	2.4
Do not know	7833	31.9
Total	24538	100.0

Source: Fieldwork, 2009

However, 33 percent of the households had migrated to the present place from outside the district, while 2.4 percent of them had migrated even from outside the country. Nearly one-third (32%) of the responding HH stated that they did not

know where they had come from, or were living in the current place for long.

### Reason for Coming to the Current Location

There can be multiple reasons for moving to a new place. Table 8 illustrates the reasons for coming to the current location of residence. For most of them it was a quest for a better life, sufficient livelihood opportunities, while for a few, it was the structural reasons. Several of them had more than one reason to come to the present place of residence.

For any migration, potential migrants gather as much information as they can with regards to the place of destination. In this case, relatives were the most instrumental in passing the information to their own people wanting to migrate.

**Table 8: Reasons for In-Migration**

Reason to come to this Place	Frequency	%
Buy land	3658	16.1
Land distribution	3598	15.9
Job found	1627	7.2
Job transferred	379	1.7
Relative	5212	23.0
Old land	1812	8.0
Education	2011	8.9
Marriage	574	2.5
Environment	1223	5.4
Land for sharecropping	1688	7.5
Do not know	6093	26.9
Others	2862	12.6

Source: Fieldwork, 2009; CBS, 2001

Therefore, one of the most prominent reasons for migrating was having a relative in the area (23%). Otherwise, 32 percent maintained that they migrated to the place either because there was land to buy or because the government was distributing

land, or because land for squatting was available. In addition, 8 percent had their ancestral land and 7.5 percent had migrated there as they saw the opportunity for the sharecropping.

About 27 percent of the households could not trace their place of origin, and had been living in the present place for generations.

### Land Ownership and Land Holding Pattern

We now present the situation of land ownership, land holding patterns, and the land tenure system in practice in the study sites. Here, ownership refers to the land owned with all legal authority and documents, and with all the rights to inherit, divide, sell or use for the desired purpose. However, land holding refers to cultivating or occupying the land without having full authority or legal documents to use all the rights as landowners. For example, a squatter holds the land but does not own that land.

### Ownership of Registered Land

The ownership of registered land is the only secured land ownership in our context. This study shows that only two-

third of the holding (66%) is registered land. Table 9 presents the land ownership pattern of the owner-cultivators of the registered land.

**Table 9: Own Registered Land (Owner-Cultivator)**

Land size	No. of owner HH	%
Landless	5712	22.7
0.01-0.5 ha	12577	49.9
0.51-3.0 ha	5969	23.7
3.01-5.0 ha	438	1.7
Above 5 ha	503	2.0
Total	25199	100.0

Source: Fieldwork, 2009; CBS, 2001

In terms of ownership pattern, 22.7 percent of the families were found to be landless. Nepal Living Standard Survey (NLSS) 2003/04 accounts that 77.5 percent of agricultural households with land, i.e. 22.5 percent of households have no agricultural land of their own (CBS, 2004). Findings of this study, hence, very much corresponds with the national scenario.

NLSS 2003/04 also indicated that landlessness of the agricultural households increased by nearly 6 percent in the last decade. In 1995/96, during the

**Table 10: Landownership Distribution among Caste/Ethnic Groups (in %)**

Caste/Ethnic Groups	Landless	0.01-0.5 ha	0.51-3.0 ha	3.01-5.0 ha	Above 5.0 ha
Tarai Ethnic	22.5	44.7	24.7	3.6	4.5
Hill Ethnic	20.9	54.9	22.8	0.9	0.5
Dalit Tarai	50.1	37.5	11.2	0.6	0.6
Dalit Hill	40.2	50.7	8.0	0.5	0.6
Chettri/Thakuri	20.6	50.0	26.5	1.5	1.5
Brahmin Hill/Sanyasi	12.0	59.7	25.5	1.1	1.7
Brahmin Tarai	10.9	51.6	36.4	1.1	0.0
Tarai Middle Caste	11.2	35.6	44.5	3.9	4.8
Others	31.7	40.5	24.1	1.7	2.0
Average	22.7	49.9	23.7	1.7	2.0

Source: Fieldwork, 2009; CBS, 2001

first NLSS, number of agricultural households without having any land of their own was 83.1 percent, which decreased to 77.5 percent in 2003/04. The average holding had also reduced from 1.1 ha to 0.8 ha (Ibid).

The caste/distribution of the households provides us with a social dimension of the landownership pattern. Table 10 illustrates the landownership distribution among different caste/ethnic groups.

Agricultural households not having any land of their own depended on sharecropping, plowing another's land in a semi-bonded contract, viz. *Haruna*, *Haliya*, etc., or, cultivating the land which they did not own. 941 households, which is 3.7 percent of the total study population, owned more than 3 ha of land, which, in some cases, are underreported for various reasons.

### Renting of the Agricultural Land

According to the study, 1571 households (6.2%) reported that they have rented out their land to others on various bases, which is somewhat similar to the NLSS 2003/04 report that showed 7 percent of the total landowners rent out some or all of their land to others (CBS, 2004). Table 11 illustrates the household renting out land and the land sizes.

Thus, according to the study, only 6.2 percent of the HH reported that they have rented out their land for cultivation, but 20.6 percent of the HH reported of renting in land for cultivation under different tenure arrangements. This clearly shows that the landowners who do not cultivate but have rented out the land were not willing to provide proper information in this regard.

There can be some other factors for such discrepancies between the renting-out and renting-in of land. For example, one may have rented out the

**Table 11: Households Renting out Land and Land size**

Land size	No. of renting out HH	HH in %
0.01-0.5 ha	775	49.3
0.501-3.0 ha	632	40.2
3.01-5.0 ha	54	3.4
Above 5 ha	110	7.0
Total HH renting out the land	1571*	100.0

\*1571 is equivalent to 6.2 % of the total responding households.

Source: Fieldwork, 2009

land to more than one cultivator, or, a few cultivators of Guthi land might also have been included in this land renting-in category. Nevertheless, it is not surprising that the landowners voluntarily hide such information. Table 12 illustrates the distribution of land size of the renting-in land.

**Table 12: Renting-in Land and Land Sizes**

Land size	No. of renting in HH	%
0.01-0.5 ha	2916	56.2
0.501-3.0 ha	1956	37.7
3.01-5.0 ha	74	1.4
Above 5 ha	242	4.7
Total renting-in land	5188*	100.0

\*5188 is 20.6 % of the total responding households.

Source: Fieldwork, 2009.

Thus, such a discrepancy is not only due to technical errors, but also due to the attitude of the owners who are not willing to recognize the tillers as the tenants and give any share of the rights to them. This will further complicate the issues of tenancy rights, as only one-third of the tenants are recognized by the owners.

### Aankada/Birta Land: The Residual of Feudal Land Policy

Ukhada, a form of Jimindari landownership that was said to have been abolished in 1964, is found even today in three districts of Tarai, namely, Rupandehi, Kapilvastu and Nawalparasi. The tenants in those three districts are forced to work on the land without any guarantee of tenancy rights. One recent study (Bhushal, 2008) estimates that there are about 8515 Ukhada tenants who have been tilling the land without having any ownership rights. The present study also included two districts where Ukhada problem was apparent, a picture of which is presented in Table 13.

**Table 13: Size of Ukhada Holding by Households**

Land size	Ukhada holding HH	%
0.01-0.5 ha	2992	88.8
0.501-3.0 ha	373	11.1
3.01-5.0 ha	3	0.1
Above 5 ha	1	0.0
Total	3369*	100.0

\*3369 is 13.4 % of the total responding HH.

Source: Fieldwork, 2009.

From the table, it becomes evident that 3369 (i.e., 13.4%) of the responding households have been cultivating Ukhada land of different sizes. Of which, 89 percent of the households hold less than 0.5 ha land. Only 4 households reported that they hold more than 3 ha of such land.

### Public Land and Squatters

The study revealed that 22.7 percent of the households did not have their own land, meaning, they were landless in terms of having their own registered land. However, households have been holding different types of land for many years. 23.3 percent of responding households reported that they have been living in public

(*sarbajanik*) land and as squatters (*sukumbasi*). The landholding status of the responding households is shown in Table 14.

**Table 14: Households Holding Public Land**

Source: Fieldwork, 2009

Out of 23.3 percent of the responding households who have been holding public land, 88.4 percent of them held less than 0.5 ha. However, 157 households (i.e., 2.6%) households held more than 3 ha of such land, of which 37 households (i.e., 0.6%) held more than 5 ha. Although there were some indications that even the households owning registered land had occupied such public land, such cases were hardly reported during the study. Nevertheless, none of the households utilizing and cultivating Ukhada or Public land had any legal ownership status, rather they were fighting for the same.

### Registered Tenants: *Dartawal Mohi*

*Mohi* are statutory tenants, who are registered and recognized, and whose tenancy rights over the land they are tilling is recognized and protected. It is said that the 4<sup>th</sup> amendment in 2053 BS (1997) and 5<sup>th</sup> amendment in 2058 BS (2002) of the Land Act of 2021 BS(1964) abolished the dual ownership over land, and, *mohi* issues were finally resolved. However, in reality, such dual ownership is still in practice. This study showed that, 614 (2.4%) households were still recognized tenants but did not have their share of the land they are entitled to. Table 15 presents the number of

Land size
0.01-0.5 ha
0.501-3.0 ha
3.01-5.0 ha
Above 5 ha
Total
*5880 is 23.3 % of households.

registered tenants-*mobi*- and the number of years they have been tilling the lands.

**Table 15: Registered Tenants According to the Years of Cultivation**

No. of Years	No. of Registered Tenants	%
Less than 10 Years	359	58.4
11-20 Years	95	15.5
21-30 Years	48	7.0
Above 30 Years	117	19.1
Total	614*	100.0

\*This is 2.4 % of the total registered tenants in land.

Majority of the tenants (58.4%) had been cultivating the land under the recognized tenure arrangement for less than 10 years, however, 15.5 percent of them had been cultivating for 11-20 years, 7 percent for 21-30 years, and, 19.1 percent for more than 30 years. This clearly shows that the issue of Tenancy and *mobiyani* has not been resolved yet.

**Adhiya/ Battaiya: Sharecropping**

Sharecropping is a common practice, which is commonly known as *Adhiya* and *Battaiya* in the hills and Tarai respectively. This study showed that 14.5 percent of the total registered tenants maintained that they do sharecropping. Usually, the total produce is equally divided between the owners and the sharecroppers. There might also be some other forms of arrangements, for example, sharing of seeds, fertilizers, byproducts like hay straw, etc., and in some cases, sharecroppers may have additional obligations to the landowners along with occasional free labour. Sharecropping is a common practice for years in all parts of the country. This may also indicate the presence of absentee landowners, i.e., owners who do not cultivate the land, but employ certain

households under sharecropping arrangements, so that the sharecroppers do not hold rights to claim tenancy rights over the lands. Table 16 presents the households according to the number of years they have been doing sharecropping.

**Table 16: Sharecropping Households**

Years	No. of sharecropping HH	%
1 Year	574	15.7
2-10 Years	2294	62.6
11-20 Years	514	14.0
21-30 Years	136	3.7
Above 30 Years	146	4.0
Total	3664*	100.0

\*This is equivalent to 14.5 % of the total responding households.

Source: Fieldwork, 2009

According to the table, almost 16 percent of the household was doing sharecropping just for one year, whereas nearly 63 percent of the households had been doing sharecropping for 2-10 years. About 8 percent households have been living with sharecropping for more than 20 years. However, this does not necessarily mean that they have been doing sharecropping with the same landowners. Usually landowners change the sharecroppers frequently to avoid the risk of sharecroppers claiming any tenancy rights after some years of cultivation of the same field.

**Cultivating Land in Contract: *Thekka* and *Hunda***

Another form of tenancy arrangement is cultivating land in contract, i.e., in *thekka* and *hunda*. Under such arrangements, landowners contract out their farmlands to cultivate for which the cultivators get certain amount of the produce. This is common in the hills as well as in Tarai, but this study found that only 1.8 percent of the responding households were cultivating

under such contract arrangement. The number of households doing cultivation under *bunda* or *thekka*, and the number of years, are presented in Table 17.

Even though a small proportion, this also indicates the presence of absentee landowners from a different angle, who neither cultivate the land by themselves nor manage a regular supervision of the agricultural activities. In such cases, this becomes the safest way of securing products from the land. They just contract out for certain amount of grain, and the rest is taken care of by the cultivators. This practice very much favors the landowners, as, in such arrangements, the tenants cannot claim any tenancy rights over the land they cultivate.

**Table 17: Households Practicing *Hunda* and *Thekka***

No. of Years	No. of HH in Contract	%
1 Year	56	12.4
2-10 Years	277	61.3
11-20 Years	43	9.5
21-30 Years	28	6.2
Above 30 Years	48	10.6
Total	452*	100.0

\*This is equivalent to 1.8 % of the total responding households.

Source: Fieldwork, 2009

### ***Haliya/Haruwa* Bonded Labor in Practice**

*Haliya/Haruwa* is a form or system of hiring ploughmen as contract labourers but consists of certain elements of bonded arrangement, where the ploughmen usually work for free to pay off the debts (see Dhakal, 2007 for a more detailed discussion on this). Officially, the system was supposed to have been abolished together with the abolition of *Kamaiya* system, but it persists in practice. In the process of the research, we came across

28 households who were living as *Haruwa/Haliya*, and a few of them were on debt bondage. Table 18 illustrates the number of *Haliya/Haruwa* households and the number of years they have been living as *Haliya/Haruwa*.

The table indicates that there are still households that are forced to enter into this exploitative system, as that remains the only option of the livelihood for some of them, particularly the Dalit families. Twelve households had started as *Haliya/Haruwa* within the last ten years, while five households had been serving as *Haliya/Haruwa* for more than 30 years. Among the 28 *Haliya/Haruwa* households, 8 households had *Haliyachal*, a piece of land, often degraded one, given to ploughmen for cultivation until they serve as *Haruwa/Haliya*.

**Table 18: Number of Households of *Haruwa/Haliya***

No. of Years	No. of <i>Haruwa</i> HH	%
1 Year	1	3.6
2-10 Years	11	39.3
11-20 Years	5	17.9
21-30 Years	6	21.4
Above 30 Years	5	17.9
Total	28*	100.0

\*This would be equivalent to 0.1% of the total households.

Source: Fieldwork, 2009

### **Guthi: A Complicated Form of Land Tenure**

Guthi land is one of the most complicated forms of land tenure arrangement found in Nepal. Guthi is actually a form of land endowment made for religious or philanthropic purposes. Today it remains as an institutional landlordism with arbitrary use of power by the Priests and Mahantas over the tenants. Again, it is the tenants who suffer, as they do not have



any legal authority over the land they have been cultivating for years. Table 19 illustrates the households holding Guthi land for different periods of time.

**Table 19: Households Holding Guthi Land**

No. of Years cultivating Guthi Land	No. of HH with Guthi Land	%
1 Year	5	2.6
2-10 Years	59	30.6
11-20 Years	8	4.1
21-30 Years	2	1.0
Above 30 Years	119	61.7
Total	193*	100.0

\*This is equivalent to 0.77 % of the total households.

It is interesting to record that there existed several other forms of tenure arrangements. Most common among them was the system of mortgaging land against loan, where the loan giver/money lender cultivates the land until the loan is paid back. For this, the loan receiver usually does not have to pay any extra interest.

The number of households cultivating land under other forms of tenure arrangement was 1051, (i.e., 4.17%). In addition to the cultivation of mortgaged

**Table 20: Households under Other Tenancy Arrangements**

No. of Years	Frequency	%
1 Year	330	31.4
2-10 Years	597	56.8
11-20 Years	75	7.1
21-30 Years	19	1.8
Above 30 Years	30	2.9
Total	1051	100.0

Source: Fieldwork, 2009

land, tenants cultivating land belonging to the schools and temples (but not Guthi) are also included in this category. A few of them also mentioned that they cultivated their relatives' land when the relatives were out of the village or country. In such cases, sharing of the produce varied from case to case.

Almost 57 percent of the 1051 households had been cultivating such land for 2-10 years. Similarly, 31 percent of the households had started to cultivate such land since only a year ago, whereas 30 households, i.e., 3 percent of the households have been cultivating such land for more than 30 years.

### Tenure Arrangement and Formal Contract

Since such a substantial number of households had no ownership certificates of the land they were cultivating or occupying, and, many households had been cultivating others' land under different tenure arrangements, it was important to find out how many of them actually had the legal documents to prove them as the official tenants of such land. The study revealed that 72.8 percent of the tenants/cultivators did not have any such formal documents. Only 12.2 percent possessed a receipt given by the landowners (*bali bujhaeko Rashid*), and, 4.3 percent have retained the receipt of the tax/levy paid to the authorities. A very few (3.8%) had a provisional certificate as the tenants (*mobi*

*ko asthai nissa*), and less than one percent claimed that they were mentioned as tenants in the Field Book in the government offices.

### Land Ownership of Women

In the recent years, the question of women's landownership has been in focus. Access to and control over land by women is viewed by many as one of the indicators of women's empowerment. This study revealed that 16.2 percent of the households had some lands in women's name (Table 21). NLSS has shown that 10.83 percent of households had land under women's ownership in 2003/04 (CBS, 2004). This has presumably increased over the years, particularly in the urban areas.

**Table 21: Distribution of Households having Women's Ownership**

Description	No. of HH	% in total	% within group
House	1621	6.4	39.8
Land	1526	6.1	37.5
House + Land	927	3.7	22.8
Total	4074	16.2	100.0

Source: Fieldwork, 2009

According to the table (Table 21), among 16.2 percent of women having land registered in their name, 6.4 percent own house only, 6.1 percent own land only and 3.7 percent own both house and land. This is 39.8 percent, 37.5 percent, and 22.8 percent of 16.2 percent respectively.

Similarly, among the different caste/ethnic categories, Tarai Brahmins and Hill Brahmins had the highest proportion of women having land registered in their names, with 29.5 and 27.2 percent respectively. This was followed by Tarai middle caste (21.7%), hill ethnic (16.9%) and Chettri/Thakuri (15.3%). Tarai Dalits had 12.9 percent and Hill Dalits had 9.7 percent households having the land

registered in women's names. The lowest of all was the Tarai ethnic group, where only 9.1 percent within the group had land registered in women's names. This, in general, follows the pattern of land ownership among these caste/ethnic groups. However, this may raise a question: can the land ownership of women alone be an indicator of women's empowerment? Our data does not necessarily support this hypothesis. Other important indicators would be the quality of land and the decision making power within households.

### Food Sufficiency

Different households own and/or cultivate different categories and types of land, however, for majority of them agriculture was the primary occupation and thereby the means of livelihood. Yet, the agriculture-dependent households could not survive the whole year with the food they produced. Some landless families could not grow any food at all. Such problems are illustrated in Table 22 which gives the distribution of households according to their food sufficiency level.

**Table 22: Levels of Food Sufficiency of the Households**

Level of Food Sufficiency
No production
Upto 3 months
Upto 6 months
Upto 9 months
1 year
More than 1 year
Total

Source: Fieldwork, 2009

According to this study (although there were a few households who denied to give this information), only 25 percent of the total households could survive with their



own production, and the remaining 75 percent of them were food deficit households. About 20 percent of the households did not have any kind of land to produce their own food. Twenty-three percent could survive only up to 3 months with their own production, 20 percent up to 6 months, and 12 percent up to 9 months in a year. However, 20 percent of the responding households maintained that they were food sufficient households, and 5 percent reported that they produced surplus food, implying that, at the time of the study, only 5 percent could make some surplus capital by investing in the agriculture. This study also revealed that 63 percent of the total households had to depend on extra source of income for their livelihoods. The level of food sufficiency shows a strong correlation with the land ownership pattern, which, in turn, also corresponds to the caste/ethnic identities of the responding households.

It was found that 53.6 percent of Tarai Brahmin households, 42.7 percent of Tarai Middle Caste households, and 32.6 percent of Tarai ethnic households were food sufficient. At the same time, only 7.2 percent of Tarai Dalit households were food sufficient, where 45.8 percent among them did not grow any food at all, and 21.5 percent of them could hardly survive up to 3 months with their own production. This indicates the skewed land distribution in the Tarai districts, and in particular among the different Tarai caste/ethnic groups.

In the hills also, 32.1 percent of Hill Brahmins and Sanyasis and 25.5 percent of Chettri/Thakuri households were food sufficient and a few of them produced surplus food. On the other hand, only 19.2 percent of the Hill ethnic and 7.6 percent of Hill Dalit households were food sufficient. Among the Hill Dalits, 31 percent did not grow any food at all and 37.5 percent could survive hardly up to 3 months with their own production. This also reveals that the land distribution

among different caste/ethnic groups and within the Dalits themselves is also very much skewed.

### Managing Food: The Coping Strategies

From the above section, it was clear that 75 percent of the households were food deficit households, and could not produce enough food for their survival. This implies that they must have something to do to earn their bread, at least to serve their daily hand to mouth problem. Table 23 shows the different coping mechanism/strategies of the food deficit households.

**Table 23: Coping Strategies of Food Deficit Households (Multiple answers)**

Activities/ Strategies	Households	Total %	% of Cases
Agricultural labor	10617	25.9	55.9
Wage Labor	9297	22.7	48.9
Loan	5069	12.4	26.7
Business	3256	7.9	17.1
Borrowing	3716	9.1	19.6
Forest products, tubers, etc.	84	0.2	0.4
Govt. & other Services	1614	3.7	8.5
Foreign job/ employments	3835	9.3	20.2
Relatives	1152	2.8	6.1
Sons, Daughters	164	0.4	0.9
Other	2224	5.4	11.7
Total	41028	100.0	

Source: Fieldwork. 2009

Note: Multiple responses, i.e., each HH having multiple strategies.

According to this study (see Table 23), one-fourth of the food deficit households (25.9%) managed their foods primarily by working as agricultural labor. However, 55.9 percent households reported that they worked as agricultural laborers to earn livelihood. Similarly, 22.7 percent earned

their food by primarily working as day labourers, nevertheless, 48.9 percent of the food deficit households were working as day laborers. Among these food deficit households, 12.4 percent took loans, 9.1 percent borrowed cash or kind, where 7.9 percent of them earned from business to buy the food.

Income from remittance occupied the fourth position as a means of source of income to buy food, and it was in the rising trend. A few households (0.2%) also reported that they collected forest products, like tubers and other wild fruits or roots to supplement their food.

### Labour Arrangement

Even though nearly a three-fourth of the households primarily depending on agriculture was food deficit households, a majority of them were stuck in agricultural activities, many as agricultural laborers. Meanwhile, many of the households had to employ other laborers in the peak of agricultural seasons. The study accounted that 48.4 percent of the households, particularly with small holding sizes, primarily depended on family labor. More than one-fourth of the HH managed through labor-exchange system\*\*, and 2.7 percent of the households reported of collective labor management practices, through semi-permanent labor gangs, who accomplished the agricultural activities of the gang members on a rotational basis. Sometimes, even the contractors supplied such labor gangs to accomplish a particular piece of work on a contract basis. Among the responding households, 20.5 percent said that they hired the laborers on daily wage basis, while 40 percent of the respondents maintained that they actually hired such wage laborers in different scales. A very few of them managed by hiring

seasonal labor migrants from India, *Haliya/Harawa*, or labor supplied by contractors.

### Inheritance and Land Acquiring Pattern\*\*

After describing the land holding/ownership pattern and different forms of tenure arrangement, we now briefly present the patterns of inheritance and land acquiring. As we saw earlier, land was either registered in women's names, in men's names or was owned by both jointly. According to this survey, 82 percent of the total land was owned by males, 15 percent by females, and the remaining 3 percent was owned jointly.

Most of the women owning land maintained that they either bought the land from their own income or inherited the land as parental property, while some claimed that they received the land as parental gifts (*daijo*) during or after their. The different sources of female owned land are given in Table 24.

**Table 24: Sources of Land Registered in Women's Names**

Sources	No. of HH	%	% of Total Cases
Inheritance of parental land	141	32.7	38.7
Own Income	171	39.7	47.0
Sukumbashi Aayog/ Kamaiya Aayog/	21	4.8	5.8
Basobas Company/ Govt Support	34	7.9	9.3
Daijo	48	11.1	13.2
Others	16	3.8	4.4
Total	431	100.0	

Source: Fieldwork, 2009

\*\* Such labour exchange system is widely prevalent in hill districts, and known as *parma*, *porima*, *pareli*, etc. in different hill districts, or among the hill population of Nepal.

\*\* This part of the analysis is based on the responses from 10 percent of the households selected through systematic random sampling.

Hence, in terms of the land registered in female's name, nearly one-third (32.7%) of the households reported that they had inherited the land as their parental property, whereas, 39.7 percent claimed that it was through their own income (own income may also partly imply the income of their husbands). 11.1 percent of the responding households maintained that the source of the land in women's name was the parental gifts (*daijo*) during or after marriage. Some other sources of the land registered in women's name were the Sukumbasi Aayog, Kamaiya Aayog, Basobaas Company, and so on, as shown in Table 24. The table also shows that 18.4 percent of the households having land in female's name had acquired land through more than one sources.

Registering land in women's name is an increasing tendency in the urban areas, where about 30 percent of the land is registered in women's name in recent transactions. According to NLSS II, this is much lower in the rural areas (CBS, 2004).

In case of men, more than half of the responding households reported that they acquired land as parental property, followed by the sources like their own incomes, and land grants from the government. Table 25 illustrates the different sources of land acquired by men.

As it becomes clear from the table, 65.9 percent of the land registered in men's name was inherited as parental property. Another 29.6 percent responded that the land was bought with their own income. 6.4 percent had received land from the government, distributed by Sukumbasi Aayog/Kamaiya Aayog or Basobaas Company. 3.6 percent of the responding households maintained that they 'prepared' the land they now owned by clearing the forest and the bushes. Other sources included, *Aputali*, *Daijo*, received as tenancy rights, *daan*, (a religious donation, received only by priests, etc.). Twenty-six percent of the responding households had acquired land through more than one way.

**Table 25: Sources of Land Registered in Men's Name**

Sources	No. of HH	%	% of Cases
Purkhauli Sampati	1219	52.20	65.90
Own Income	690	29.60	37.30
Sukumbashi/ Kamaiya Aayog	150	6.40	8.10
Basobas Company	66	2.80	3.60
Prepared by oneself	84	3.60	4.50
Others	126	5.40	6.80
Total	2335	100.00	

Source: Fieldwork, 2009

Similarly, 81 households (3%) reported to have land registered jointly in both the male's and female's names. In such cases, 40.7 percent reported that such land was acquired as parental property, 35.8 percent had bought with their own incomes, and 12.5 percent had received the land from Sukumbaasi Aayog, Basobas Company, and other forms of government grants. Likewise, 3.7 percent of them had land as *daijo* (parental gift to brides during or after her marriage). 26.6 percent of the households had more than one sources to get the land thus registered.

Overall, 7.2 percent of the responding households had received land under government's initiatives, during land distribution to the squatters, flood, and landslides victims, Kamaiyas, etc. At the same time, 2.6 percent (64 HH) of the sampled households also responded that they had given or lost the land for the public interest, for example, to construct market places, roads, canals, schools, temples, and so on.

### Land Selling and Buying in the Last 10 Years

Land transaction in the last ten years has seen both ups and down. Political and policy environments have restricted as well as facilitated the land transaction in these years. 10.6 percent of the households

reported that they sold the land in the last 10 years, while 18.7 percent reported of buying land in the same period.

Of the 10.6 percent of the total land sold, 2.5 percent was *ghar-ghadri*, 2.6 was irrigated *khet* land, 3.1 percent was rain-fed land, 1 percent *bari* land, and the remaining were forest, bush, grazing land, etc. On the other hand, of the 18.7 percent of the land bought, 8.6 percent was *ghar-ghaderi*, 3 percent was irrigated land, 4.6 percent was rain-fed *khet*, and 2.6 percent was *bari* land.

Out of the total land sold or bought of different types, nearly 90 percent was less than 0.5 ha, while only about 10 percent was reported to be of more than 0.5 ha. Practice of registering land in the women's name was also increasing, for example, only 0.3 out of 2.5 percent of the *ghar-ghaderi* sold was registered in women's name, whereas, 2.4 out of 8.6 percent of *ghar-ghaderi* bought was registered in women's name.

### Reasons for Selling Land

When exploring the reasons for selling land, it was revealed that 11.7 and 21.3 percent of the total respondents sold the land to pay back the bank loans and loans from the moneylenders respectively. 14.5 percent reported that they sold the land to manage money for health treatments of the family members, and for 11.4 percent of the total respondents it was to build new houses. Likewise, 8.6 percent of them needed money to buy land in other places, while 8.1 percent reported to invest in their children's education. Other reasons for selling land included buying household goods/amenities, making financial investments, starting business, migrating out of the current place of residence, and so on.

### Sources to Buy Land

Revealing the sources to buy land, majority (52%) of the respondents maintained that

that was their own income, not inherited as their parental property. Borrowing loan was the second most practiced option (19.9%), where 8.6 percent took the loans from relatives and friends, 6.7 percent accessed the banks, 2.4 percent borrowed from the *Bachat Samuha* (saving credit groups) or cooperatives, and 2.2 took the loan from the moneylenders. Similarly, 8.3 percent reported that buying land for them was the reinvestment of the money they had made by selling the land in other places. Meanwhile, 3.4 percent who had sold their *ghaderi* land had bought farmlands. Significantly, 7.2 percent had bought the land with the money from remittances. Remaining 4 percent managed from several other sources other than the ones mentioned above.

### Conclusions

This paper has presented the existing land holding and ownership patterns, including women's ownership over land resources, and different forms of land relations in practice in 16 different VDCs of Nepal. The paper has also illustrated the pattern of land transactions and associated activities, such as the reasons for selling the land and the arrangements of the financial resources to buy new land. The paper has further incorporated data on level of food sufficiency and labour arrangements for the agricultural activities. It has attempted to give a fresh look at the labour migration pattern, along with socio-demographic features of the study population, which was relatively a large sample size for such a study. Hence, the importance of the paper lies in supplying the fresh and reliable database at a time when they are much needed.

On the other hand, it is difficult to draw any concrete conclusion based on such a descriptive database and information, as it requires a rigorous analysis placed in context. However, pattern of land ownership and land holdings, forms and pattern of tenure arrangements, low level

of food sufficiency, etc., suggest that there is a need for urgent interventions for correcting the unequal land relations, insecure tenants' rights, and low productivity. It is necessary, as there is no other short-cut way, to increase the productivity of land to secure the food security of the majority of the agriculture depending households.

Meanwhile, average land holding size and the existing agriculture system are not able to engage all the agriculture dependent people in agricultural activities throughout the year; therefore, this labour force has to be relocated in non-agricultural sectors.

This study has also provided a basis for discussing some of the pertinent issues related to the land and agrarian reforms in Nepal. It is hoped that this information (supplemented with the main report of the research and the follow-up analytical papers coming forth) will help shaping up many relevant issues for discussing and debating. Some of the issues include, redistributive land reform, ensuring tenants' rights and the rights of the cultivators along with commercialization of agriculture land, at the same time preventing commercial pressure on agricultural land. Preventing further fragmentation of agricultural land should be dealt with high priority for which devising a legal, social mechanism of inheritance of land as parental property needs to be worked out at the policy level. What is also desired is an effective

community approach for proper land use, planning and zoning.

Above all, this paper hopes to fulfill the needs of all those who are looking for fresh and reliable data on land holding and land relations in the country. It is also hoped that the data provides a firm basis for healthy and thorough discussions and debates among all the stakeholders on issues related to land and agriculture in Nepal.

## References

- Bhushal, S.K. (2008). *Kapilvastu ma Bhumi Samasya ek Parichya (An Introduction to Land Problems in Kapilvastu)*. Kapilvastu: Kapilvastu Sansthaagat Bikas Samiti.
- CBS (2001). *Population Census, National Report*. Kathmandu: Central Bureau of Statistics, GON
- (2004). *Nepal Living Standard Survey, 2003/2004 Vol I & II*. Kathmandu: Central Bureau of Statistics, GON
- (2009). *Report on the Nepal Labour Force Survey 2008*. Kathmandu: Central Bureau of Statistics, GON
- Dhakal, S. (2007). Haruwas, the Unfree Agricultural Labourer: A Case Study from Eastern Tarai, in *Contributions to Nepalese Studies*. Vol 34 No 2, July 2007. Journal of Centre for Nepalese and Asian Studies, Tribhuvan University, Kathmandu.





# Inclusive Land Policy and Human Security in Post-Conflict Situation:

## A Study of Parsauni and Pratapur VDCs of Nawalparasi District

■ Lisha Shrestha<sup>++</sup>

### 1. BACKGROUND

Land is a very important socio-economic asset in poor countries where wealth and survival are measured by control of, and access to, land (USAID, 2005). Similarly, in the context of Nepal, where the social structure is complex and multilayered, it is one of the most important sources of livelihood where landholdings determine one's social power, relation, prestige and dignity, Ghimire (2001) asserts that the inequities and feeling of insecurity is caused by the access and control of land by small number of powerful people compared to the marginal farmers, sharecroppers and landless workers. Some argue that such land-based inequities was the root cause of armed conflict in Nepal (Ballentine and Sherman, 2005; Reflection, 2007; Basnet, 2008).

The 1994 UNDP Development Report included basic needs such as food, shelter, employment, health, public safety, and human rights as the components of human security (Khatri, 2006). Commission on Human Security (2003) claims that human security is achievable only when people are

free from worries of daily life ensuring them food availability, income security, health and political security. However, in an agrarian structure, fulfilling component of human security is impossible without having access to land resources. Muni (2006) refers to land as the measure for protection of people. Access to and control over agricultural value-based land have direct impact on food security, shelter and employment, and thus on human security. The greater the access to and control over the land, greater the means to achieve human security.

As Nepal is undergoing the transitory phase of post conflict period and is observing major upheavals in all sectors and levels, the aspects of human security has increasingly gained prominence in discussions. The chances of weakening human security in post conflict situations can be high because of increasing insecurities and uncertainties. In many countries like Rwanda, Burundi, Mozambique and Angola, land related issues have continued to be major causes for continuing disputes and conflict, even after peace agreements, proving that land issues, if properly unaddressed in post

---

<sup>++</sup> Ms. Lisha Shrestha recently completed her Masters in Human and Natural Resources Studies from Kathmandu University. This article is a synopsis of her masters thesis.

conflict situations, can potentially lead to another form of conflict. Therefore, it is the right time for the State to listen to the voices of land dependent groups who have so far been exploited and controlled by the power and discriminatory land acts and policies by drafting new policies that promote equitable and transparent land distribution. Introducing the concept of inclusive land policy in the Constitution is the only way out for minimizing the potential threat of land-related conflicts in future.

## 2. INTRODUCTION

With the aim of analyzing the consequences of land based inequities and the interrelationship between availability of land and human security, this research was carried out in Parsauni and Pratapur VDCs of Nawalparasi district during January – March with the following objectives:

- a. to examine the relationship between inequitable distributions of land and armed conflict,
- b. to identify the inter-relationship between the availability of land and human security, and

- c. to explore the opportunities and challenges of inclusive land policy for better prospects of human security in the aftermath of conflict.

The research was based on qualitative method of research design. Snowball sampling method was used in order to find the cases of the victims, land conflict, land holdings and to identify the leaders of various political parties. The field data was triangulated by involving the key informants, key interviewees and political leaders from each leading parties in the group meeting and Focused Group Discussions (FGDs). The interviews and discussions were mostly carried out with the farmers, *Hammvas*<sup>2</sup>, landless farmers, farmers working in *adbiya* (sharecropping), local teachers, landowners, local political leaders and the elderly. The respondents were categorized according to the size of the land they held. The number of respondents from the both of the VDCs was 32 while there were 12 key informants from within the study area and 4 from outside the study area. Table 1 shows the number of respondents interviewed from different categories of landholders in both the VDCs.

**Table 1: Number of Respondents Based on Different Land Holding Categories**

S.N.	Categorization of Landholders	Land Holding Size	No. of respondents in Parsauni VDC	No. of respondents in Pratapur VDC
1	Large Landholders cum Migrants	10 <i>bigha</i> (6.7 ha) or more	4	4
2	Large Landholders cum Indigenous Groups	10 <i>bigha</i> (6.7 ha) or more	4	5
3	Medium size Landholders cum Migrants	1 <i>bigha</i> (0.67 ha) – 5 <i>bigha</i> (3.35ha)	5	--
4	Marginal Landholders cum Migrants	Less than 1 <i>bigha</i> (0.67 ha)	6	5
5	Marginal Landholders/cum Indigenous Landless Groups	Less than 1 <i>bigha</i> (0.67 ha)/ no land	6	6
	Total		25	19

Source: Author, 2009

<sup>2</sup> Form of bonded labours of Tarai, not yet legally abolished.

### 3. RESEARCH FINDINGS

The research findings have been categorized according to the objectives of the research.

#### 3.1 Relationship between Inequitable Distribution of Land and Armed Conflict

The term 'inequitable distribution of land' refers to the situation of differentiation in availability of land. It is caused either by policy of the State or social phenomenon based on discrimination by caste or class. Social exclusion and inequities have prevailed in Nepal for a long period. These inequities were mainly based on caste, ethnicity and geographical differentiations. The influence of political economy of land continued in different political regimes throughout history. Even the Land Act of 1964 could not provide justice to the poor farmers, land workers, and the landless groups. Instead, it was modeled in such a way that the interests of the landlords were kept intact (Adhikari, 2008). Such policies made the land dependent landless groups even more vulnerable. The study area also had many such groups that were vulnerable, and conflict between the different landholding groups was found to be prevalent. The following sections look into the types of conflict between the landholders and the landless.

##### Intra-Migrants Conflict

The conflict and power struggle between different types of migrants are called intra-migrants conflict (intra-settlers conflict). This can be further differentiated into two categories based on the place of origin of the migrants.

##### *Conflict between Migrants from Same Place of Origin*

This type of power-based conflict was found in Parsauni VDC where there was a mixed composition of caste and class. The migrants of large landholders and

medium landholders had a typical kind of power struggle. They fall in this type of conflict because their place of origin was similar to that of their origins, as they had migrated from Palpa or Syangja. The migrants with large landholdings were the settlers who were powerful and had settled before the migrants with medium and marginal landholdings. The former enjoyed full power and autonomy over the villagers since the Rana regime until the Panchayat system. However, they were overcome by the medium landholders after the restoration of multiparty democracy in 1990, who tried to take revenge against the large landholders by lessening their power in terms of access to politics, power and bureaucracy. For this, they needed the support of the local people and pro-poor groups.

Most of these pro-poor groups were landless, *Haruwās* and labourers working on daily wages. In order to motivate and mobilize them, the medium landholders became a bit liberal to them in terms of facilities while sharing the seeds for cultivation and humiliating them, compared to the large landholders. The latent intra-migrants conflict between these two groups was only for the power over bureaucracy and politics. They exercised their power through the channels like VDC offices and schools. One such example was the case of a Shri Niljunga Higher Secondary School, which was in the name of the great-grandfather of the present fourth-generation Thakuri landlord, but it was immediately changed to Gyanodaya Higher Secondary school after the medium landholders came into power. Similarly, they took charge of the local bureaucracy by electing their Nepali Congress (NC) candidates as VDC chairperson and secretary. This significantly reduced the power and influence of the large landholders.

As in the case of migrants with marginal landholdings, they became the key actors



of the armed conflict because they were against the unequal distribution of land and exploitation by the landlords. They not only supported the movement but also actively participated in it. They were involved in the movement as Maoist cadres at the time when the revolutionary momentum was amplifying in the hills of the mid-western region. The agitation and formation of armed groups became active from 2008 when Maoist cadres from Tarai went there to make them politically aware through their campaigns. At that time, the marginal landholders provided them accommodation and helped them to hide while they planned to blast the houses of large landholders.

### ***Conflict between Migrants from Different Place of Origin***

Conflict between the migrants from different places of origin is based on power struggle and discrimination. This type of conflict was highly noticeable in Pratapur VDC. The conflict was between the high class-caste people (large landholders) migrated from Palpa, Baglung and Syanja, and the migrants (landless/marginal landholders) from the border of India in search of livelihood almost five decades ago. They were either Tarai Dalits (or ethnic groups) who worked as *Haruvas* or were working as *Baniyaris* (doing daily wage labour) in the landlords' houses. The power balance between the landlords and the workers was unequal. The prevailing inappropriate wage rate was creating conflict among them. This could be observed at the house of one of the landlords where an old aged high class Chettri woman was distributing daily wages to the workers. One middle-aged Dalit worker was not allowed to enter the main entrance. He was mentally frustrated and could not even keep his head high. The woman then asked one of her head

labourers to handover the money, which was merely Rs. 50. The workers, when asked about the wage rate, mentioned that there was no fixed rate. As they did not have any other source of income, their livelihood was dependent entirely on that amount only.

One of the women of middle-aged landless Tarai migrants of Dalit community had this to say: *"We do not have any land and are residing in a place where the landless are living for years hoping to get enough land for survival. We do not have any option left besides working for the landlords on such minimal wage. The landless committee, with the help of a local NGO, protested against the low wages and put pressure on the landlords to increase the rate but it has not been practiced. There are many landlords who did not like this movement. Since this has happened, they look at us and our movement negatively and now prefer to have labourers from India and giving their land in hundi. I am also a member of this group and working for creating awareness about the unequal wage rates and urging the government to secure our land rights. I hope the victors of this election will make such policies where the landless people will get enough land required for sustaining their livelihoods."*

### **Inter-Migrants Conflict**

Inter-migrants conflict here refers to the power based conflict between the landless, marginalised and indigenous groups, and all the categories of migrant landholders as shown in Fig.1. These groups have been exploited from the beginning of settlement of the migrants. They are mostly Tharus who have been working as *Haruvas* for the migrant landholders. Although they knew they were being exploited in terms of wages and inhuman behavior they were unable to voice their concerns due to the feeling of insecurity they had. Many of them thought that these consequences were because of their fate and had nothing to do with exploitation. Most of them, however, felt

<sup>3</sup> Interview taken with Ms. Nirmala Harijan on 17 Feb 2009 in PratapurVDC

that they were not getting justice and felt they were being treated unequally.

One of the middle aged respondents from Pratapur VDC said, *“We had 3 bigha of land but our legal document of land got burnt on the house fire. One of the new settlers from Palpa grabbed this opportunity and transferred our land into his name. We could not do anything afterwards as the land title was already in his name.”*<sup>4</sup>

There were many evidences of such cases in both the VDCs. However, except for a few minorities, none of the victims were willing to go against it. The indigenous landless had difficulties in getting daily wages because of the migrant marginal landholders and differentiation in wage rates. This led to less availability of daily wage jobs and high competition. Thus, they were psychologically distressed and were kept aloof from all of the land movements. This shows how “power” can affect one’s capability, way of thinking and network in politics, resulting in a latent

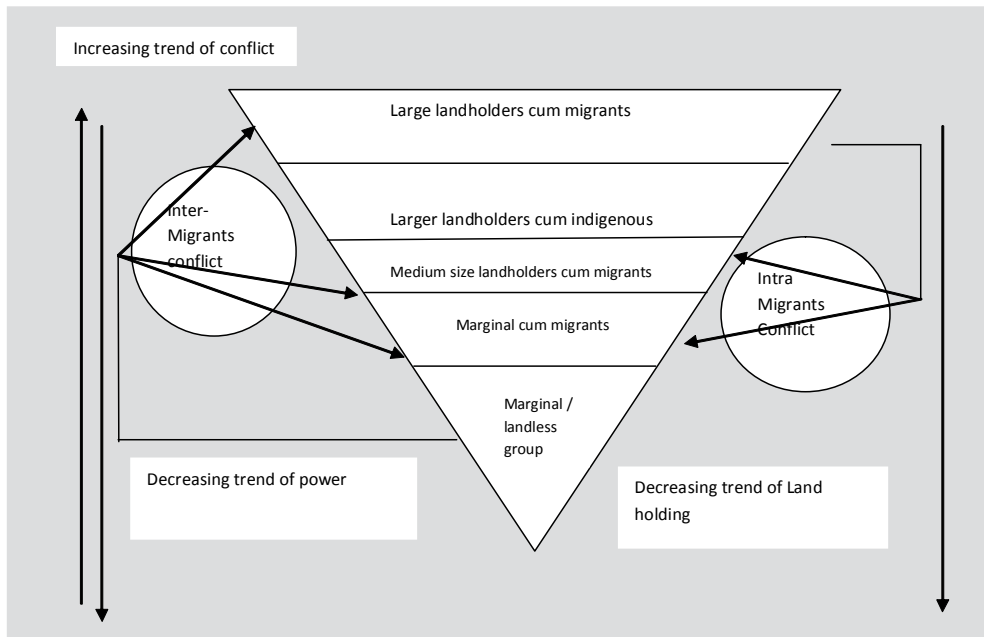
form of conflict in the community.

Land being the hidden base for amplifying social capital always plays an important role in the existing power struggle. Since power struggle has inter-relationship with policy and network of relations, it directly affects the masses on how much landholdings they have as shown in Fig.1. Greater the quantity of land, more powerful the person in the society. Therefore, policies made by the people who have better access to power cause unequal distribution of land among the masses.

### **Role, Effect and Consequences of Armed Conflict**

It is a known fact that the inequities in landholdings in the rural part of Nepal played a role in fuelling land based armed conflict of Nepal (Ballentine and Sherman, 2005). This study also revealed that there are several cases that prove that the armed

**Figure 1: Power Trend and Conflict in relation to Landholding**



Source: Author, 2009

<sup>4</sup> Interview taken with Ms. Gangotri Chaudhary on 18 Feb 2009 in Pratapur VDC.

conflict took place due to unequal distribution of resources, particularly 'land'. Similarly, Upreti (2004) claims that dual ownership, exclusion policy, unequal distributions and land based inequities are the causes of land conflict in Nepal. There were several violent attempts in destroying the physical infrastructure of the elite landlords in Parsauni, and even in Pratapur there were violent attempts too, although not at the same level. It was evident that in Pratapur, there existed latent conflict but the outcome of conflict was not quite the same as that in Parsauni. The influence of Maoist ideology was comparatively intense in Parsauni as most of the respondents from the group of marginal landholders directly supported them during the time of insurgency. They helped the movement either by becoming a member of the party or supported them by providing them logistical supports. The Maoists formed a Land Distribution Committee and distributed 5 *kattba* (0.16 ha) of land to the landless or land poor groups. These land poor groups were mostly migrants who became landless after their land was swept away by floods, whereas some were those who became landless due to eviction and discrimination from the landlords. (see figure 1)

Conflict existed between these groups as migrant landless and land poor groups were more powerful than the landless indigenous groups. They even held positions

in the Land Distribution Committee. Altogether 220 households benefited from this committee in Parsauni VDC. We will be discussing these issues in the following categorization of different landholders through their personal experiences and cases.

### 3.2. Relationship between Access to Land and Human Security

This research has looked into 4 out of the 7 parameters of human security identified by Commission on Human Security. Muni (2006) identifies these parameters as important factors for protection of people by stating "protection of land is protection of people" as it provides habitation, economic and social security. Rai (2006) opines that these parameters cause instability and the internal conflict within a country. He further argues that the causes for this instability are class exploitation and discrimination based on caste and ethnicity. Therefore, countries which are undergoing internal conflict or post conflict situation should adopt the human security aspects which provides protection from hunger, unemployment, social conflict, political repression and environmental hazards because people are more vulnerable to these aspects when the state is going through internal conflict. Table 2 shows the relationship between the parameters of human security with different land holding categories, justifying

Table 2: Relation of Parameters of Human Security with different Categorization of Landholder

Human Security Parameters	Categorization of landholders				
	Large Landholders cum migrants	Large Landholders cum indigenous groups	Medium size Landholders cum migrants	Marginal landholders cum migrants	Marginal landholders cum indigenous groups
Economic Security	<ul style="list-style-type: none"> <li>Better condition as they can afford their living from the surplus of agricultural produce</li> </ul>	<ul style="list-style-type: none"> <li>Comparatively vulnerable as most of them derive income from land productivity only which is not sufficient</li> </ul>	<ul style="list-style-type: none"> <li>Better off as they are involved in other income generating activities likes services</li> </ul>	<ul style="list-style-type: none"> <li>Vulnerable group as they are dependent on sharecropping of large land holder</li> </ul>	<ul style="list-style-type: none"> <li>Highly vulnerable due to state of being landless and dependency on others land</li> <li>Lacks health, education and other facilities</li> </ul>

	<ul style="list-style-type: none"> <li>Afford education, health facilities and others needs through the land</li> </ul>		beside agriculture	<ul style="list-style-type: none"> <li>cum migrants</li> <li>Economy is sustained by foreign employment</li> </ul>	
Food Security	<ul style="list-style-type: none"> <li>Easily afford food even when the production is low</li> <li>Purchasing capacity is comparatively high</li> </ul>	<ul style="list-style-type: none"> <li>Due to large family size food is less affordable from the agricultural production</li> </ul>	<ul style="list-style-type: none"> <li>Can afford food either by production or purchase from market</li> </ul>	<ul style="list-style-type: none"> <li>Can afford food (less nutrient) but have to go on starvation when production is low due to natural calamities</li> </ul>	<ul style="list-style-type: none"> <li>Depending on one time food and most of the starvation when productivity is low</li> </ul>
Environmental Security	<ul style="list-style-type: none"> <li>Not effected from natural disaster as their land is not disaster prone and in safer place</li> <li>Easily cope with natural disaster</li> </ul>	<ul style="list-style-type: none"> <li>Affected from natural disaster as they were evicted from their land by large landholders cum migrants</li> </ul>	<ul style="list-style-type: none"> <li>Not affected since they own land in safer place</li> </ul>	<ul style="list-style-type: none"> <li>Most of them own land in flood vulnerable place so crops were destroyed due to flood hence difficult to cope and vulnerable</li> </ul>	<ul style="list-style-type: none"> <li>Except <i>harmas</i>, most of the people are highly affected as they are forced to live in flood prone area which is less productive</li> </ul>
Political Security	<ul style="list-style-type: none"> <li>Powerful and influential</li> <li>Easy access to politics and have better political linkages</li> </ul>	<ul style="list-style-type: none"> <li>Comparatively less</li> <li>powerful than</li> <li>large landholders cum migrants</li> </ul>	<ul style="list-style-type: none"> <li>Powerful and influential</li> <li>Easy access to politics and have better political linkages</li> </ul>	<ul style="list-style-type: none"> <li>Politically empowered after the Maoist movement and struggling</li> </ul>	<ul style="list-style-type: none"> <li>Less powerful in comparison with other group of landholders and unaware of basic human rights</li> </ul>

that the land is the most crucial factor for fulfilling various parameters of human security and is essential in post conflict situations.

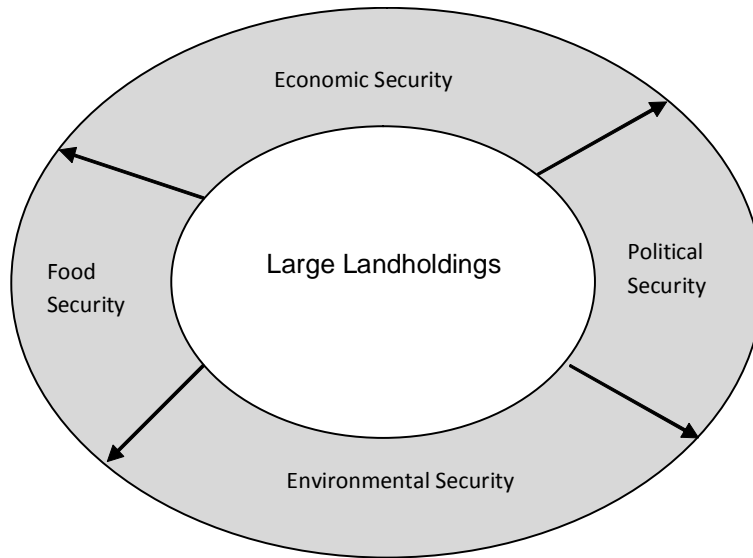
Studying carefully the parameters

(economic, food, environment and political) of human security that are directly related with the access to and ownership of land, we can say that greater the ownership of land greater is the

Components of Human Security

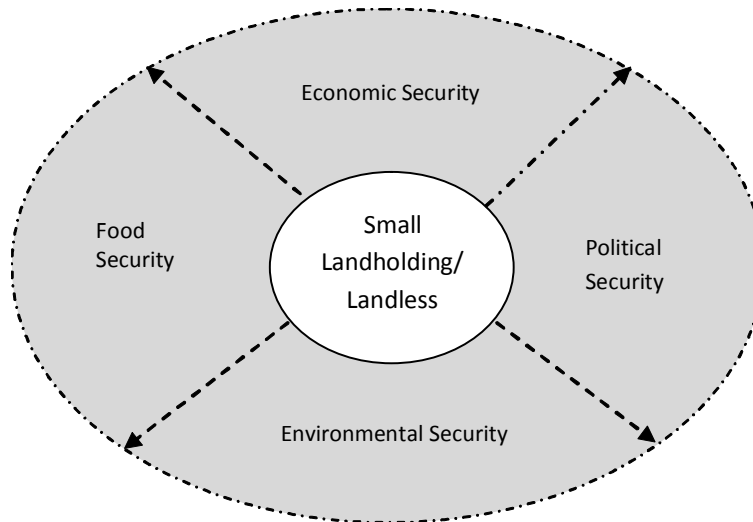
**Figure 2:**  
Relationship of large landholding with components of human security

Source: Author, 2009



**Figure 3:**  
Relationship of small landholding/landless with components of human security

Source: Author, 2009



fulfillment of human security. The diagrammatic illustrations in figures 2 and 3 explain how the interlinkages between the two affect each other.

From the above comparative figures it can be clearly perceived that people get excluded from the various dimensions of human security when they have little or no

land at all. Almost all the people with little or no landholding depended on others' land for survival and were doing this for generations. This situation of dependency further restricted them to explore other possibilities. Lack of education and other opportunities made them more vulnerable, making it extremely difficult to get out of the

discriminatory agrarian social structure. For them, meeting the components of human security by themselves was immensely difficult, if not impossible. They shared distant relationship with all the components of human security (Figure 3). Human security for them was out of the zone of reach, whereas for those who had large landholdings, the components of security were very much under the zone of their convenience. The large landholders were not completely dependent on food since they were also engaged in other income generating activities. They used the produce as surplus value for economic security by selling or renting it for other purposes

Therefore, for the large landholders, human security is conserved and protected. However, for those whose survival totally depends on land, or when there is no productivity due to natural disasters, or when they have to face a situation when the large landholders do not provide them land for sharecropping and cultivation, the issue of their own survival remains unanswered. Thus, large landholders share a close link with the components of human security with the continuous dark line as shown in Figure 2. Unlike them, people with no land have difficulties meeting the requirements because it is far from their reachable area, as shown by the dotted lines in Figure 3.

We can observe from Table 2 how landholding affects various parameters of human security. If people do not have access to other sources for income generation and solely depend on the production from the land, it makes them rather vulnerable compared to the landowners. In rural areas, ownership of land is a strong indicator of wealth and power. Thus, people with marginal land never get a dignified status in the society, depriving them from education, participation in politics and other social activities. Such people have a tendency of having comparatively large number of

children which again restricts them from fulfilling the basic needs easily. Thus, land is an integral part for the people in the rural areas to fulfill their basic needs and strengthen their human security parameters.

### 3.3 Inclusive Land Policy in Post Conflict Situation

Basnet (2008) defines inclusive land policy as the process of including the neglected and marginalized groups to participate and influence in the decision making process to dismantle the deep-rooted discrimination and inequity within state institutions. Unruh (2008) views post conflict situation as one of the most dynamic and fluid circumstances that could create disruption of social networks on the basis of land based inequities. Therefore, ensuring rural people's secure access to land is an important part of conflict resolution and prevention of future conflicts (Barquero, 2004).

The people of the both the VDCs identified land as a major issue to be addressed in the transition period through Constitution making process. They defined the term inclusive land policy as "equitable and transparent distribution of land on the basis of number of people in the households, their direct role in the productive activities from the land and the intensity of their dependency on land for their livelihood." In this context they have identified following processes as important steps for making an inclusive land policy:

1. The land ceiling act should be revised and those who have land in more than one place should be identified. Provision of ownership of land in only one place should be implemented. This should be cross checked as the tendency to transfer land to other members in family could increase. They should be prohibited to transfer their land to their immediate family members.



2. The provision of nationalizing land should be implemented for those large landholders and landlords who have other income deriving options (job, business, etc.) for livelihood. The state should either nationalize such land or provide compensation to them and takeover the surplus land and distribute it to the landless communities.
3. Since the livelihood of large landholders do not depend on the cultivable activities of land, they should be given land for housing purpose only.
4. The family whose livelihood solely depends on land should be provided land in the ratio of 1 person = 5 *kattba* (0.16 ha) of cultivable land. Such land should be fertile with irrigation facilities with three times of rotational crop per year.
5. The policy regarding land issues should be formulated by active participation of the landless communities in each VDC and the issues should be presented by one of such representative in the Constituent Assembly.

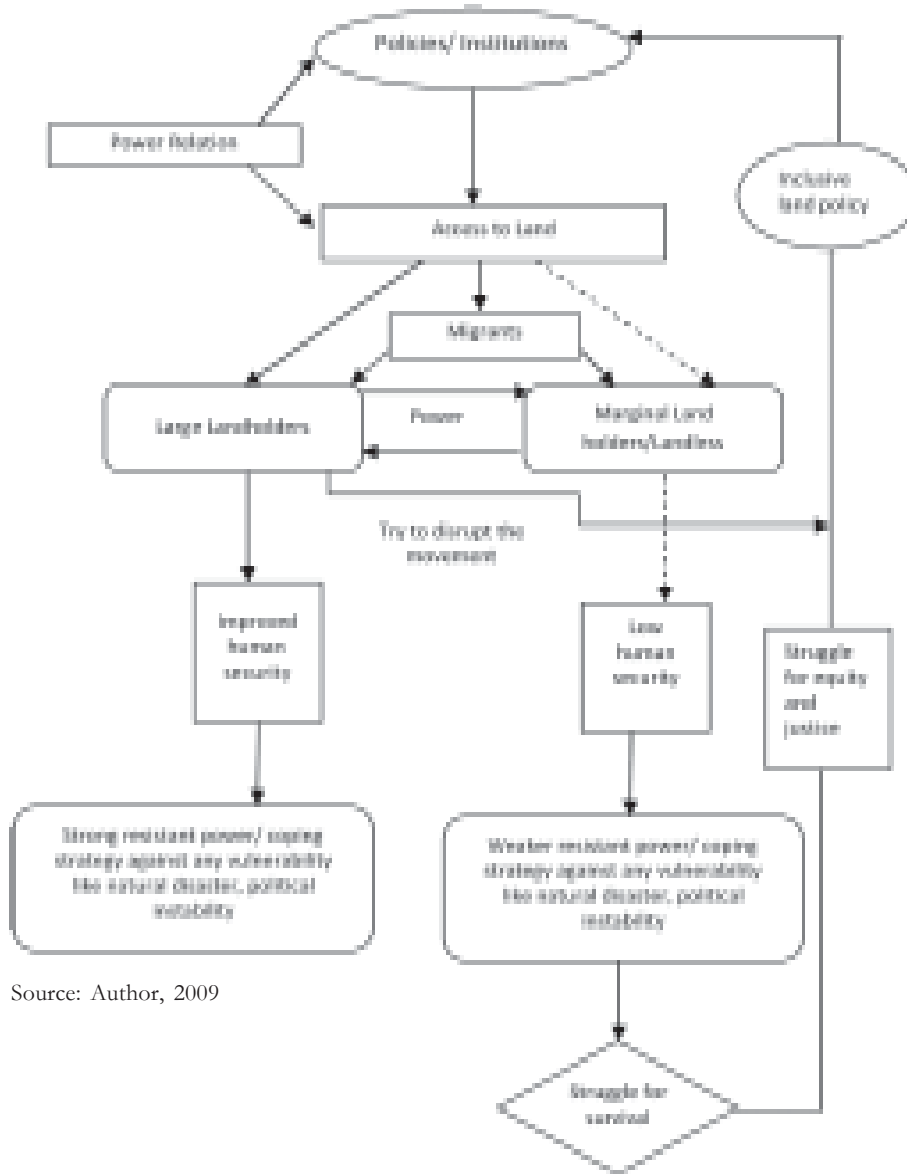
The above points articulated by the farmers in these VDCs disclose that it is high time to rethink the policies that were formulated and implemented in the past. Wily *et al.* (2009) think the historical failure of the land policy has further marginalized the landless group and only a few significant changes between feudal landlords and the land labourers have occurred. If the issues and concerns of these oppressed groups are considered in the new land policy, it will have positive impact on their livelihood status. The equitable distribution of land will thus help them to meet the basic requirements of those components in human security.

#### 4. CONCLUSION

Land is an integral component in human life that has various direct or indirect interconnections with the parameters needed for sustaining life. We can thus say that land is not only a source of inequity, power struggle and violent conflict, but also is an important means for human security. Hence there is an urgent need of inclusive land policy for equity and balance of power. However the importance of land varies from people to people according to the degree of dependency on the cultivable use of land. People with large land holdings, most importantly the landlords, have different options for sustaining their livelihoods compared to the people with marginal landholdings or those who are landless. This is due to the socio-economic value of land. Land has become one of the crucial socio-economic tools for those elite classes to meet the requirements of human security like economic security, food security, environment security, political security etc. However, for those who are marginal landholders or are landless, land itself has been used as a medium for exclusion, oppression and a source of conflict. This research has showed the evidences of armed conflict caused by inequitable distribution of land, although the outcome and the degree of the impact in the two selected study sites were different. The difference was caused by the unequal power relation among the key players during the insurgency. This shows that the socio-political interconnections are responsible for changing the situations and outcomes in such agrarian structures. The structural dimension inevitably creates imbalances in power relations between different classes of people affecting the social network of relationship and economic influence as shown in Figure: 4.

The influence of power and policies has

Figure 4: Inter-Relationship between Power, Policies, Landholdings, Conflict and Human Security



Source: Author, 2009

often resulted in causing disparity in landholdings causing power struggle between the large landholders and marginal landholders. People with marginal landholdings are deprived of human security, which further weakens their resistance against poverty, disaster vulnerability and political instability. This

situation in turn forces them to struggle for survival and equity, ultimately leading to enforcement of an inclusive land policy. However, this becomes unfavourable for large landholders so they exercise their power and network in the policies and institutions, thereby creating



conflict between them and the marginal landholders.

The scenario of both the VDCs depicts a similar situation.

In this way the cycle of power struggle continues either in the form of debate or violent conflict, therefore a balanced approach is necessary to achieve land based equity through inclusive land policy.

## REFERENCES

- Adhikari, J. (2008). Land Reform in Nepal – Problem and Prospects. Kathmandu, Nepal: NIDS and Action Aid Nepal.
- Ballentine, K. and Sherman, J. (2005). The Political Economy of Armed Conflict-Beyond Greed and Grievances. USA: The International Peace Academy.
- Barquero, R. (2004). Access to Land in Post-Conflict Situations: A Case Study in Nicaragua. Rome: Italy: FAO.
- Basnet, J. (2008). How Land Reform Can Promote Inclusive Growth in Nepal in Land First, July 2008.
- Commission on Human Security, (2003). Human Right Security Now (online). Available from: (<http://www.humansecurity-chs.org/finalreport/English/FinalReport.pdf>). Accessed on 25 Feb, 2008.
- Ghimire, K.B. (2001). Land Reform at the Turn of Twentieth Century: An Overview of Issues, Actors and Processes. In Ghimire, K.B. (Ed.), Land Reform and Peasants Livelihoods. London, UK: ITDG Publishing.
- Khatri, S. (2006). What is the “New” Security Agenda for South Asia? In Baral L.R. (Ed.) Non-Traditional Security: State, Society and Democracy in South Asia. New Delhi, India: Adroit Publishers.
- Muni, S.D. (2006). Human Security in South Asia In Baral L.R. (Ed.) Non-Traditional Security: State, Society and Democracy in South Asia. New Delhi, India: Adroit Publishers.
- Rai, I. (2006). Human Security: Poverty Alleviation, Education and Health Services (A Nepali Perspective). In Baral, L.R. (Ed.), Non-Traditional Security: State, Society and Democracy in South Asia. New Delhi, India: Adroit Publishers
- Reflection (2007). Land Rights Movement in Nepal. Kathmandu, Nepal: CSRC
- Unruh, J. (2008). Toward Sustainable Livelihoods after War: Reconstituting Rural Land Tenure Systems. Natural Resources Forum, 32 (2008), 103–115.
- Upreti, B.R. (2004). Understanding land conflict: Some basic issues in Nepal (online). Available from: ([www.friendsforpeace.org.np/images/pdf%20files/Land%20conflict-overview.pdf](http://www.friendsforpeace.org.np/images/pdf%20files/Land%20conflict-overview.pdf)). Accessed on 25 Feb, 2008.
- USAID (2005). Land and Conflict (online), [cited 25 Feb, 2008]. Available from: [http://www.usaid.gov/our\\_work/cross-cutting\\_programs/conflict/publications/docs/CMM\\_Land\\_and\\_Conflict\\_Toolkit\\_April\\_2005.pdf](http://www.usaid.gov/our_work/cross-cutting_programs/conflict/publications/docs/CMM_Land_and_Conflict_Toolkit_April_2005.pdf). Accessed on 25 Feb, 2008.
- Wily, L., Chapagain, D. and Sharma, S. (2009). Land Reform in Nepal- Where is it coming from and where is it going? DFID Nepal.

# Landlessness and Livelihood in Nepal\*

■ Purna Nepali<sup>++</sup>

## Background

Landlessness is a serious problem in Nepal, often cited as one of the principal causes of rural poverty. As landlessness is characterized by no possession and ownership of productive asset (i.e. land), it has wide socioeconomic implications. Sen's (1981) entitlement theory also states that the state of being devoid of entitlement is a basis for socioeconomic deprivation a strong cause of social exclusion. In addition, land is a also broader indicator of socioeconomic status in an agrarian society, and hence determines the livelihood status of individuals and households. It is also said that landlessness is one of the causes of livelihood insecurity in an agrarian society, well illustrated by fact that about 24.5 percent households are absolutely landless and about 32.1 percent households are agriculturally landless (having less than 0.1 ha) (UNDP, 2004; CBS, 2002).

Studies undertaken by various scholars (Müller-Böker, 1981; Chambers and Conway, 1992; Scoones, 1998; Ellis, 2000; Steimann, 2005; Subedi, 2007) have revealed that landless and near landless households (also called land poor households) adopt livelihood strategies (options) such as sharecropping, agricultural and non agricultural laboring, and temporal migrations to urban centres of Nepal or different parts of India. Likewise, Dahal, et. al. (2002) have shown that landlessness, marginal and small land holding and food deficiency are typical features of the *Dalits* in Nepal. While looking at land distribution pattern of Nepal, the bottom 47 percent of land owning households own only 15 percent of arable land, with an average size of less than 0.5 ha, while the top 5 percent holds more than 37 percent land (UNDP, 2004). Moreover, there is only about 20 percent arable land available, i.e., 31, 79,000 ha

---

\* This paper presents some of the findings of a PhD research on Land and Livelihood conducted at the Human and Natural Resources Studies Centre of Kathmandu University & Swiss National Centre of Competence in Research (NCCR) North-South in the Far Western Region of Nepal comprising three districts, namely, Kailali (plain), Doti (hill) and Bajhang (mountain) during 2007-2009.

<sup>++</sup> Mr. Purna Nepali is a PhD scholar doing his research on Land and Livelihood at the Human and Natural Resources Studies Centre, School of Arts of Kathmandu University.

(Chapagain, 2001), resulting in a skewed and unequal land distribution. This article attempts to disclose the nature, extent and causes of landlessness, examining the livelihood status of the landless households.

To meet these objectives, this paper has employed the concept of *natural monopoly*<sup>1</sup> and *social monopoly*<sup>2</sup> to describe landlessness and near landlessness as explained by Shrestha (2001). However, from a Marxist perspective, landlessness in agrarian society is more related to agrarian capitalism or capitalist development in agriculture. In agrarian capitalism, most of the land is concentrated on few big land owning classes for their own economic interest, and the rest of the people are landless (Marx and Engels, 1888, Offline version Marx/Engels Internet Archive: marxists.org-2000). But this statement does not hold good in the Nepali agrarian context. It is because of the fact that neither the Nepali agriculture is capitalist oriented, nor is there absence of landless people. This perspective also does not explain the widespread occurrence of near-landlessness. In this regard, to explain this Nepali reality, Shrestha (2001) has introduced the concept of natural and social monopoly that is more related to the political economy of landless and nearly landless. It is a function of land scarcity. There are two types of scarcity, i.e., relative

scarcity and absolute scarcity in the realm of political economy of man-land relation. First, relative scarcity of land is the social monopoly of land or social distribution of land. The agrarian social formation is characterized by a situation in which a privileged minority, invariably under tutelage of state, controls large amount of land, whereas the majority has little or none, a distribution pattern that produces relative land scarcity and consequently landlessness and near landlessness<sup>3</sup>. Second, there is the absolute scarcity of land. It is also called the natural monopoly of land, i.e., there is only so much land available in nature. In addition, population growth is determinant for enhancing process of landlessness and near landlessness. It is also related to ecodemographic relation of production, i.e., man-land relation.

Livelihood perspective has been explained, generally, as 'a way of living'; 'way of earning food, clothes and shelter'; and 'sustaining life by gaining and earning cash'. In the same line, R. Chambers and G. Conway (1992) have defined livelihood in the following way:

*"A Livelihood comprises the capabilities, assets (including both material and social services), and activities required for a means of living. A livelihood is sustainable when it can cope with and recover*

- 
- 1 It deals with relative scarcity and social class distribution of land. It means that the privileged minorities, invariably under tutelage of the state, controls large amount of land while the majority has little or none.
  - 2 It is the absolute scarcity of land and is related to physiographic forces: geographical distribution and availability of land in nature.
  - 3 Landless households refer to the households having no land entitlement or ownership (CBS, 2002). Müller-Böker (1986) has argued that ownership is different from possession of land which means just access for utilization. Shrestha (2001) has explained the process of landlessness and near landlessness with the help of social monopoly (relative scarcity) of land and natural monopoly (absolute scarcity of land). In this paper, both landless and near landless households are broadly called as land poor households. In particular, **landless households** are those who have no land entitlement (or are devoid of land entitlement), and thus are devoid of virtues of asset entitlement for any purpose. **Near landless households** have land only for homestead and kitchen garden. In the Nepalese context, about 2 Ropani or 3 Kattha land (equivalent to 0.1 ha) is sufficient for this purpose. Households having this area of land are also understood as agriculturally landless.

*from stresses and shocks and maintain or enhance its capabilities and assets both now and in the future, while not undermining the natural resource base” (p, 6).*

Based on this definition, sustainable livelihood framework (SLF<sup>4</sup>) was formulated and developed by the Department for International Development (DFID), British (UK) Government department responsible for sustainable development and reducing poverty, in 2001. The Sustainable Livelihood Approach (SLA) is a way of thinking about the objective, scope and priorities for development. In essence, it is a way of putting people at the centre of development, thereby increasing the effectiveness of development assistance. Livelihood encompasses a far broader meaning than just what earning and the jobs of people generally imply. There is a broader definition given by Chambers and Conway about Sustainable Livelihood Approach (Chambers and Conway, 1992; DFID, 2001). This framework views people as operating in the context of vulnerability. In a larger socioeconomic environment, they have certain assets or poverty reducing factors. They gain their meaning and value through the prevailing social, institutional and organization environment. This environment influences the livelihood strategies - ways of combining and using assets - that are open to people in pursuit of beneficial livelihood outcome that meet their livelihood objectives.

In this article, only four components, namely, livelihood assets, livelihood strategies, social institutions, and livelihood outcomes, are taken into consideration. Brief descriptions of these four components are as follows:

**Livelihood assets:** These include a number of components, some of which belong to the recognized economic categories of different types of capital, and some which do not. Assets are essential components of livelihoods (Ellis, 2000). Sen (1993) asserts that livelihood assets are not only means of sustenance, but they are also sources of power and social prestige. Entitlement of assets determines social position and status in a society. Chambers and Conway (1992) have divided these assets into five categories. They are: natural assets, human assets, physical assets, social assets, and financial assets, and are presented in a pentagon plotting that lies at the core of the livelihood framework. This pentagon is used to enable information about people’s assets, thereby bringing to life important inter-relationship between the various assets (DFID, 2001).

This SLF framework faces severe criticisms for inventing assets for determining people’s status. Basically, asset pentagon intellectually distorts the understanding of capital and politically distorts understanding of causes of poverty. In fact, capital is a social relation between people, but not attributes of rich or poor households. Also, attention is displaced from inequities of power that must be involved to explain persistence and worsening of poverty.

**Livelihood strategies:** These denote a range and combination of activities and choices that people make/undertake in order to achieve their livelihood goals or outcomes. These activities include productive activities, investment strategies and reproductive choices (DFID, 2001). These strategies are composed of activities that generate means of survival. The categories and sub categories of activities are potential components of livelihood strategies (Ellis,

---

4 Sustainable Livelihood Framework (SLF), the core of the Sustainable Livelihood Approach (SLA), serves as the basis for livelihood analysis. It is simplified but does not represent full diversity and complexity of livelihoods (DFID, 2001; Kollmair et al 2006).

2001). Further, these strategies are dynamic, i.e., people combine activities to meet their various needs at different levels and on different geographical or economic levels (Kollmair et. al., 2006).

Scoones (2009) mentions that livelihood options open to the rural people belong to three broader categories: firstly, those of agriculture intensification, in which more output per unit area is obtained either through capital investment or using more labor, or of extensification, through putting more land under cultivation; secondly, diversification of income sources, including, but not confined to, coping strategies; and thirdly, migration, which can be local, national or international.

**Social institutions:** Social institutions shape people's livelihood. They operate at all levels, from macro to micro (local) level. They define systems such as resource tenure and entitlement or ownership pattern. Policies and institutions also create direct incentives for selection of livelihood strategies. An institution, such as the caste system, can have restricting effects on livelihood strategies of groups or individuals (Kollmair, 2006). Scoones (1998) views institutions as modification of either restriction or promotion of livelihood opportunities for sustainable livelihood. He also sheds light on social processes and looks at how sustainable livelihood is produced.

**Livelihood outcomes:** These are the achievements of livelihood strategies, such as more income (e.g. cash), increased well-being (e.g., self status, health status), reduced vulnerabilities (e.g., better resilience), improved food security (e.g., increase in financial status to buy food), and more sustainable use of natural resources (e.g., appropriate property rights) (Kollmair, 2006; DFID, 2001; Ellis, 2000).

Scoones (1998) has defined 'Sustainable Livelihood' differently as follows:

"Given a particular *context* (of policy settings, politics, history, agroecology and

socioeconomic conditions), what combination of *livelihood resources* (different types of capitals) result in the ability to follow what combination of *livelihood strategies* (agricultural intensification/ extensification, livelihood diversification and migration) with what *outcome*? Of particular interest in this framework are the *institutional processes* (embedded in a matrix of formal and informal institutions and organizations) which mediate ability to carry out such strategies and achieve (or not) such outcomes" (p, 3).

In particular, analysis of institutions and organizations that influence the access to livelihood resources and composition of livelihood strategies is done to produce sustainable livelihood outcomes. Following the definition of Giddens (regularized practices - or patterns of behavior structured by rules and norms of society that have persistent and widespread use) and other sociological and anthropological definitions on institution, Scoones (2009) has highlighted the importance of institutions and power relation on livelihoods. Likewise, Davies (1997) also focuses determining role of institutions on livelihoods. In his definition, "institutions are the social cement which link stakeholders to access to capital of different kinds to the means of exercising power and so define the gateways through which they pass on the route to positive or negative (livelihood adaptations)" (p, 24).

Ellis (2000) defines livelihood as the assets (natural, physical, human, financial and social), the activities, and the access to these (mediated by institutions and social relations) that together determine the living gained by individuals or households (p,10). He further adds that access to resources and opportunities may change individuals and households due to shifting norms and events in social and institutional context surrounding their livelihoods. Whitehead (2002) also argues that 'a living is made through a portfolio of activities so that



households and individuals are flexible and can adapt to wide range of misfortune and external shocks'. Rural livelihood is very diverse by adopting wide range of farm and non-farm activities based on availability of assets or resources i.e., crop production, livestock, farm wage, non-farm wage, non-farm self employment, remittance gathering or migration (Ellis, 2000; and Thieme, 2006). This diversification of livelihood by Ellis is popularly called Rural Livelihood Diversification. According to Ellis (ibid), Rural Livelihood Diversification is defined as the process by which rural livelihood construct an increasingly diverse portfolio of activities and assets in order to survive and to improve their standard of living. Ellis (ibid) has thus given emphasis on social relation that can modify access to assets. In fact, livelihood is structured by relation of class, caste and gender, ethnicity, religion and cultural identity. Considering an agrarian structure, Bernstein et. al. (1992) noted that social relations inevitably govern the distribution of property (e.g. land), pattern of work and division of labour, the distribution of income and the dynamics of consumption and accumulation. Livelihood analysis centres on basic questions of how different people gain access to assets for the pursuit of livelihoods. It is concerned with power, politics and institutions, and are mediated by power relations.

In the larger socioeconomic environment, they have access to certain assets or poverty reducing factors. They gain certain meanings and value through the prevailing social, institutional and organizational environment. In an agrarian society, as mentioned earlier, land is one of the major assets for livelihood as well as proxy of socioeconomic status, i.e., power, prestige and dignity (Regmi, 1999). Land not only possesses economic value, but also symbolic and emotional values (OECD, 2004; <http://www.oecd.org>). This environment influences livelihood strategies of people who are in pursuit of beneficial

outcomes that meet their livelihood objectives. For example, sharecropping, contract farming, tenancy, etc. are some of the land based livelihood strategies in Nepal.

## Research Method

This study was conducted in three districts of Nepal, namely, Kailali (plain), Doti (hill), and Bajhang (mountain) covering all ecological belts. Well-being ranking was carried out to identify land poor households from whom information was collected, and subsequent analysis was done through software package SPSS (Statistical Package for Social Science). Furthermore, spatial dimension (e.g. rural-urban) dynamics, and caste and gender disaggregation have also been taken into consideration for this study.

## Research Results

The following sections present some of the major finding of the research.

### Landlessness

In general, there were about 30 percent landless households. This percentage was found to be highest in Doti (39.5 %), followed by Bajhang (24.61 %), and Kailali (24.56 %). When comparing the rural and urban differences, not much difference was found between the rural (29.46 percent) and the urban (29.22 percent) households. Similarly, looking at the situation from the caste dynamics, landlessness among the *Dalits* was 86.88 percent, while it was 13.11 percent among the non-*Dalits*.

In the three sampled districts/ecological belts, women's land entitlement was only 4.1 percent against the men's land entitlement of 95.7 percent. This figure for women's land ownership was even less than the national average 8 percent of women's land ownership. Looking at of data of the three districts separately, Kailali, Doti and Bajhang had 5.57, 2.00 and 4.61

percent of women's land ownership respectively.

From the caste perspective, Dalit women's ownership was a little bit less (3.46 %) than non-Dalits women's land ownership (4.40 %). Similarly, from the rural-urban dimension, there was little variation between the rural women's land ownership (3.75 %) and urban women's land ownership (4.5 %).

Out of the total 625 surveyed households, almost 15 percent reported that they had built their house in others' land or the landowner's land. It means that they did not have entitlement to that house making them effectively homeless. Almost all of them were wage laborers or farm workers. Looking at this situation from the rural-urban dynamics, there was a significant difference between rural homelessness (20 %) and urban homelessness (9.7 %). Similar difference was also found between the homeless population of the Dalits (17.18 %) and that of the non-Dalits (8.67 %).

The above empirical observations suggest that landlessness can be said to be a direct function of land scarcity, explained by the concepts of *Social Monopoly* and *Natural monopoly* of land. Natural monopoly was naturally in Doti and Bajhang due to the lesser availability of arable and fertile land caused by undulated topographical and altitude. But, natural disasters like frequent floods have swept the fertile land and made it barren in Kailali. Similarly, though social monopoly is a key determinant in hilly and mountainous areas, natural monopoly is also observed or prevalent in these areas. In fact, fertile and irrigated land is very scarce. Furthermore, law of inheritance (dividing parental property among brothers) and population growth have also enhanced the process of landlessness.

This study has revealed the following three major underlying causes of landlessness:

- i) Distribution pattern of land and granting land in the form of Birta to the relatives and the loyal followers: Historical documents regarding the distribution of land vividly reveal that thousands of hectares of land were granted to military chiefs, royal family members, priests, and other influential persons under the Birta land-grant system. In such cases, land was used as a powerful means to influence the politics (Sharma, 2004), leaving a large number of people devoid of land property.
- ii) Use of state's machinery or apparatus to register other's land: Upreti (2004) claims that land property regime in Nepal is largely controlled by the people who are close to political power centers, who are well informed about legal provisions, and are able to influence the bureaucracy. In existing practice, acquiring registered titles on land by poor and landless people is extremely difficult and costly due to the different barriers created by land surveyors and the local elites. Upreti (ibid) has also illustrated how the landlords and the local elites maintain their hegemony and supremacy by use of local authority and power, as in the case of Guthi.
- iii) Social structure and caste based system: My own research reveals that the Dalits, who are treated as the lowest in the caste hierarchy, are overwhelmingly (about 86.88 %) are landless. The caste system was originally based on Hindu *Varna* system with the division of labour as its basis. Social stratification is also vertical in which the Dalits are structurally placed at bottom. Although it is believed that believe that it has implication only in religion and cultural spheres; in effect it has direct implications on economic affairs such as the mode of production and

production relations. As per the division of labour, Dalits are restricted and confined to serve the society by the virtue of their skills and knowledge related to caste based occupation. They have been continuing this occupation, but in turn have been restricted from getting access to land or establishing land ownership. In other words, they have been systematically marginalized and excluded from the productive resources. The consequences are that, *Dalits* are not only structurally at the bottom of society, and they have also been deprived of socio-economic and political rights such as land rights, socio-political rights and social dignity.

Originally, this *Varna* system was only for division of labor which was basically class based. Later the caste based untouchability was imposed. It was extended to Nepal from India. *Dalits* have been limited only to the services of menial jobs. The vertical hierarchy of *Varna* system is directly converted into various stratified classes in a continuum (i.e. from rich to poor). The implication of this is that *Dalits* are always devoid of access to productive resources like land and socioeconomic rights and culture. Consequently, *Dalits* are becoming landless and also caught in vicious circle of poverty. Hence, it seems special nature of feudal Hindu *Varna* based caste system which occurs in South Asia.

To be more specific, Dalits related underlying causes of landlessness are stated as below:

a) Dalits are highly dependent on caste based occupation regulated by

informal social institutions: Dalits livelihoods are highly based on caste based occupation i.e. providing their services to non-Dalits and in turn, they receive remuneration in kind in different arrangements with set of norms (also called informal social institutions), such as *Balighare Pratha*<sup>5</sup>, *Khalo Pratha*<sup>6</sup>, *Khan Pratha*<sup>7</sup>, and *Haliya Pratha*<sup>8</sup> etc. Generally they are suffering from unfair wage and caste based discrimination, and it possesses semi-feudal characteristics. It seems patron-client relation. Though young generation want to discontinue this arrangement, older generation feels their moral duty and responsibility to serve non-Dalits or their client. In contrast, other respondents also report that there are no any other options for their livelihood security. Hence, their such continuous engagement in such livelihood options regulated by semi-feudal social institution dissociate them from land ownership or entitlement.

b) Insufficient livelihood, institutionalization of *Haliya*, and Poverty Trap: As mentioned earlier, Dalits are suffering from insufficient livelihood supplied by caste based occupations and its associated social intuitions. In addition, Dalits have been working as wage labourer and plougher for long time. Due to their insufficient livelihood, they also gradually started to take loan and it increased due to higher interest rate. Hence, *Haliya* is institutionalized by unfair wage, debt bondage and caste based discrimination. Ultimately, they

5 <sup>6,7</sup> Various services of *Dalits* are provided in the context of an ongoing relationship between a client and craftsman, a system also known as patron-client relationship. These relationships are known by different names in different parts of the country such as *Bali Ghare Pratha* (Eastern Nepal), *Khalo Pratha* (Western Nepal), and *Khan System* (in Tarai).

6 *Haliya Pratha* refers to the system of hiring people for ploughing landlord's land. Semi bondage, caste based exploitation and unfair wages are the common problems being faced by them.



fall into poverty trap. Such systematic exclusion and marginalization is one of the causes for Dalits landlessness.

- c) *Sero Khane Ki Phero*: This is a widely used local proverb, where *Sero* means land property or ownership and *Phero* means production or harvest. The meaning of this proverb is “either take land or production”. *Dalits*, in most of the cases, choose the latter option *Phero*, for primarily two reasons: i) *Dalits* are highly dependent on non-Dalits for their livelihood, and they fear going against the non-Dalits due to the existing social stratification and caste system; and ii) *Dalits* do not possess cash to pay the land tax to government.
- d) As mentioned earlier, historical distribution of land to military chiefs, royal family members, priests, and other influential persons under the Birta land-grant system has never been favorable to the Dalits. In other words, Dalits have always failed to qualify under such categories, and have hence been deprived of any opportunity of receiving land.

### Livelihood Options

This section describes the livelihood situations of the target population in terms of livelihood assets, social institutions, livelihood strategies, and livelihood outcomes.

**i) Livelihood assets:** Livelihood assets are the foundations for sustainable livelihood. People need a combination of livelihood assets, namely, natural assets, human assets, social assets, physical assets, and financial assets, to achieve positive livelihood outcomes. No single category of asset on its own is sufficient to achieve this, but not all the assets may be required in equal measures. As discussed earlier, land is one of the key productive assets in an agrarian society. Another important asset is the house. A house can provide

protective space and a sense of security for an individual and his/ her family. The type of house also determines the living standard of the dwellers. For example, a thatched house is considered as a *Kacchi* or weak house, signifying poor socioeconomic status. In the process of this study, 56.65 percent of the households reported that they had stone houses, followed by thatched (20.61 %), wooden (17.53 %), and brick (5.19 %) houses. Among the three districts, Kailali had the highest number of thatched houses (32.89 %), followed by Doti (26.80 %). But in the case of Bajhang, 99.48 percent reported that they had stone houses.

**Financial assets:** Financial asset is an important asset that directly contributes to the livelihood people. Data gathered during the study has revealed that the average monthly earnings and expenses for a single household (of six family members) were NRs. 3024.76 and NRs. 3924.03 respectively. Comparing among the districts, expenditure and income of Bajhang was the highest (NRs. 4784.11 and NRs. 4114.10 respectively), followed by Kailali (expense NRs. 3512.87 and income NRs. 3259.77), and Doti (expense NRs 3555.24 and income NRs 1654.61). All these figures amount to less than one dollar per day, indicating that these people are living under the poverty line.

When the respondents were asked about their major sources of income, 50.53 percent of the households reported that it was wage labor, followed by agriculture (22.67 %), migration to India (15.89 %) and other works (10.85 %). As for the *Dalits*, 52.81 percent of them were engaged in wage labor, while 44.37 percent of the non-*Dalits* were doing the same.

**Sources of loan:** Out of the surveyed households, about 65 percent households took loans for their households for sustaining their livelihoods. Relatively, tendency of taking loan was highest in Doti (71.28 %), followed by Kailali (70.25 %), and Bajhang (50.25 %). In rural-urban

dimension, there is no any considerable difference in taking loan. From the caste perspective, the non-Dalits took relatively less loan (57.88 %) than the Dalits (66.74 %).

As for the sources of loan, about 72.75 percent households reported that they took loans from informal sources such as their neighbors, relatives, friends and local landowners. About 17 percent reported that they took loans from formal sources such as banks, and credit groups.

### Social Institutions

It was observed that the livelihood options of the surveyed population was by and large shaped and regulated by existing social institutions such as *Khalo Pratha*, Sharecropping, *Haliya* and *Kamaiya Pratha*, and were characterized by unfair wage, debt bondage, social control and caste based discrimination. They were strongly tied up with these social constraints. Skewed and inequitable distribution of land inherently makes a society structural and hierarchical. It allows big land owning classes to exercise power over landless and nearly landless people. Bebington (1999) has argued that asset such as land is a source of power in a society. In the same line, Scoones (2009) has argued that the interplay of power is shaped by social institutions.

### Livelihood Strategies

Livelihood strategies denote wide range of activities that households adopt to earn livelihood. The most common livelihood

strategy was wage labor in on-farm and off-farm activities. On-farm activities were sharecropping, contract farming, agricultural labor, etc., while off-farm activities were the traditional caste based occupations such as, cobbling, tailoring, black/gold smithy, carpentry, rickshaw pulling etc., or seasonal migration to urban cities or even to India for livelihood opportunities.

When the respondents were asked about their main activity for their livelihood, more than 60 percent of them said that it was the farming activities. But that was usually in subsistence level. In off-farm activities, riksaw pulling, wage labor, seasonal labor migration to India, and carpentry were the most common examples. As for the caste-based occupations, black smithy, leatherwork, tailoring, and gold smithy still existed commonly. Details of the livelihood options in the different VDCs are given in Table 1.

Coping strategies: Here, coping strategies mean the activities the respondents have been adopting in food deficit conditions. In such times, majority of households (about 60 %) usually took loan from the local landowner and bought grains. Interest rate generally ranged between 60 to 80 percent (sometimes it was even 100 percent). It was followed by wage labor, in which other family members (including children and old men/women) would also be engaged. Sometimes, they also worked as domestic servants. Some of them also considered sharecropping as a coping strategy, as it could help them to cope with food deficit for 2-3 months in a year.

Table 1: Livelihood Options by Districts

Ecological Belts	M
Mountain District 'Bajhang'	Cl (U
	M (R
Hill District 'Doti'	D Si (U
	K (R
Plain District 'Kailali'	D (U

		India, sand screening, and carrying soil for construction purposes.
	Majhigaun (Rural)	Farming, caste-based occupation (tailoring, black smithy, gold smithy, leather work, shoe making etc.), wooden pot making, <i>Mate bandaki</i> (Land mortgage), <i>Rithi &amp; Khalo Pratha</i> , school teacher, NGO activist, Employee of community managed electricity system, seasonal migration to India, livestock keeping-goat raising, business, wage labour etc.
Hill District 'Doti'	Dipayal Siligudhi (Urban)	Farming, sharecropping, Wage labour at Silugadhi and Pipalla bazaar bus park, caste-based occupations (tailoring, black smithy, gold smithy, playing musical instruments etc.), <i>Khalo</i> , <i>Mate Bandaki</i> (land mortgage), Stone query, Porterage, <i>Haliya</i> , seasonal migration to India holder, pension, carpentry, etc.
	Kadamandu (Rural)	Farming, seasonal migration to India, <i>Rithi &amp; Khalo Pratha</i> , sharecropping, Wage labour under <i>Khalo</i> , <i>Mate Bandaki</i> (Land mortgage), <i>Haliya</i> , carpentry, etc.
Plain District 'Kailali'	Dhangadhi (Urban)	Farming, <i>Adhiya</i> (sharecropping), contract farming, cutting and selling of firewood, wage labour, <i>Kamaiya</i> , <i>Haliya</i> , caste-based occupations (black smithy, gold smithy, tailoring), share-rearing livestock (goat <i>adhiya</i> ), seasonal migration to India, <i>Haliya</i> , , <i>Mate Bandaki</i> , etc.
	Baliya (Rural)	Farming, sharecropping, caste-based occupations (black smithy, gold smithy, tailoring), selling firewood, coal making from firewood, seasonal migration to India, stone query, screening sand for construction, making and selling alcohol (beverage), wage labour, etc.

Source: Field Study, 2007/08

This study has revealed that the most commonly adopted coping strategies are borrowing money, purchasing food on credit, and migration. The practice of relying on less expensive food was also a widely adopted coping mechanism, as was the increasing practice of spending less on non-food items.

### Livelihood Outcome

As discussed earlier, livelihood outcomes are the achievements of livelihood strategies, such as more income, increased well-being, reduced vulnerabilities, improved food security, and more

sustainable use of natural resources (Kolmair, 2006 ; DFID, 2001; Ellis, 2000).

Food sufficiency is one of the positive measures of livelihood outcome. The study revealed that the average food sufficiency of the three sampled districts was 2.9 months. Looking at the districts separately, Kailali, Doti, and Bajhang had food sufficiency up to 2.6, 2.5 and 3.5 months in a year respectively. From the caste perspective, Dalits had 2.4 months of food sufficiency in a year, while the non-Dalits had 4.01 months of the same.

When the respondents were asked about the local perception of their living

standards, more than 75 percent of them claimed themselves to be in low living standards. When asked about the key determinants of living standard, most of them listed land entitlement, family size, reliable sources of income and employment as the most important ones. However, even among them, land entitlement was perceived as the most important basis for a decent living standard, with 99.83 percent weightage, confirming, yet again, that land entitlement has a key role to play in determining livelihood and socioeconomic status.

### Conclusion

This study has revealed, with various examples and evidences, that landlessness is one of the primary causes of rural poverty. In an agrarian society, land-poor households do not have any opportunities to improve their living standards and sustain their livelihoods. The study has again shown that Nepal's historical context, social structure and relation, and the state apparatus are some of the underlying causes of landlessness and poverty.

Landlessness has direct implications on livelihood in terms of livelihood assets, social institutions, livelihood strategies and livelihood outcomes. It reflects an unjust and unfair picture of the society. Most of the respondents were found to be living below the poverty line, with less than one dollar per day. Their livelihood options were wage labor, sharecropping, and caste based occupations, which in turn were regulated by social institutions like *Balighare*,

*Khalo*, *Haliya Pratha* and were characterized by unfair wage, debt bondage and social exploitation.

Based on these empirical findings, and keeping in mind the upcoming constitution of Nepal, following suggestions/recommendations are made with the hope that they would be useful to the drafters of the constitution and the lawmakers of this nation.

- i) Land-poor households should be given entitlement to productive assets, particularly land.
- ii) Feudal and semi-feudal institutions such as *Balighare*, *Khalo*, *Haliya Pratha* etc. should be abolished and declared illegal by the State.
- iii) Social reform programs should take integrated approaches when addressing the land-poor households.
- iv) Land should not be treated as personal or private property. It is a natural resource just like air and water, and thus every individual should have equitable access. It is also the property of the state, and the state has the responsibility to see that land does not become a basis of injustice and inequality.

If the land issues are not addressed with a pro-poor approach for social justice, current political change will not lead to socio-economic reform. In that case, economic democracy will also not be attained, and consequently sustainable peace will not be achieved.

### References

- Bebbington, A. (1999). 'Capitals and Capabilities: A Framework for Analyzing Peasant Viability, Rural Livelihood and Poverty'. *World Development*, 27 (12): 2021-2044.
- Bernstein, H., Byres, T. J. (2001) From Peasant Studies to Agrarian Change. *Journal of Agrarian Change*. 1 (1):1-56.
- CBS. (2002). *Population Census 2001. National Report*. Kathmandu: Central Bureau Statistics, His Majesty's Government of Nepal.

- Chambers, R. and Conway, G.R. (1992). Sustainable Rural Livelihoods: Practical Concepts for the 21<sup>st</sup> Century. *IDS Discussion Paper 296*. Cambridge: Institute of Development Studies.
- Chapagain, D.P. (2001). National Strategies for Sustainable Development, Status Review and Dialogue, Land and Agriculture. Kathmandu: The World Conservation Union (IUCN).
- Dahal, D.R., Gurung, Y.B., Acharya, B., Hemchuri, K., Swarnkar, D.(2002). *National Dalit Strategy Report*. Kathmandu: ActionAid Nepal, CARE Nepal, and Save the Children.
- Davies, S. (1997). Livelihood Adaptation. Paper for Workshop Making Livelihood Work-Women, Men and Children in Rajasthan. *IDS Working Paper* (not available). Brighton: IDS (Institute of Development Studies).
- DFID. (2001). *Sustainable Livelihood Guidance Sheets*. London, UK: Department for International Development. <http://www.poverty-wellbeing.net/media/sla/docs/2-1.htm> Downloaded on February 21, 2007.
- Ellis, F. (2000). *Rural Livelihoods and Diversity in Developing Countries*. New York: Oxford University Press.
- Kollmair, M., Mueller-Boeker, U., Ejderyan, O. & Gamper, S. (2006). *The Sustainable Livelihoods Approach* (Input Paper for Integrated Training Course of NCCR North-South) Laos (25. June-2 July, 2006 Updated) (Unpublished). Switzerland: Zurich University.
- Marx, K, and Engels, F. (1888) *Manifesto of Communist Party*. (Originally published in 1847). Available at: Offline version: Marx/Engels Internet Archive (Marxist.org) 2000. Retrieved on Nov 15, 2008.
- Müller-Böker, U. (1981). *Thimi Social and Economic Studies on a Newar Settlement in the Kathmandu Valley*. Senckenbergstrasse: Selbstverlag Giessener Geographische Schriften Geographisches.
- Müller-Böker, U. (1986). *Interpretation of Cadastral Map and Land Registers-Examples from Kathmandu Valley and Gorkha*. In: Seeland, Klaus. (ed.): Recent research on Nepal. Schriftenreihe Internationales Asienforum, 3: 141-157, Munchen, Koln, London.
- OECD (2004). Land, Conflict and Development: What Role for Donors ? OECD Development Centre. <http://www.oecd.org>. Retrieved on February 13, 2008.
- Regmi, M.C. (1999). Landownership in Nepal. Delhi: Adroit Publisher.
- Roberson, A. and Mishra, S. (1997). *Bonded Labour in Nepal's Agricultural Economy*. Kathmandu: Anti-Slavery International and INSEC.
- Scoones, I. (1998). Sustainable Rural Livelihoods: A Framework for Analysis. *IDS Working Paper 72*. Brighton: IDS (Institute of Development Studies).
- Scoones, I. (2009). Livelihood Perspectives and Rural Development. *Journal of Peasant Studies 36 (1)104-112*.
- Sen, A. (1981). *Poverty and Famines: An Essay on Entitlement and Deprivation*. Oxford: University Press.

- Sen. A. (1993). Capability and Well being, in A.K. Sen and M.C. Nussbaum, eds, *The Quality of Life*. Oxford: Oxford University Press..
- Sharma, K.P. 2004. Land Reform: An Viable Program for Poverty Reduction. *Readings on Governance and Development*. (III):143-149.
- Shrestha, N. R. (2001). *The Political Economy of Land, Landlessness and Migration in Nepal*. New Delhi: Nirala Publication.
- Steimann, B. (2005). *Livelihood Strategies in North-Western Pakistan, Results from the Sustainable Livelihood Survey 2004, North-West Frontier Province (Pakistan)*. *NCCR IP 6 Working Paper Series No. 6*. Zurich: Zurich University.
- Subedi, B. (2007). *Livelihood at Risk*. Kathamandu: Informal Sector Service Centre (INSEC).
- Thieme, S. (2006). *Social Network and Migration: Far West Nepalese Labour Migrants in Delhi*. Muenster: LIT VERLAG.
- UNDP. (2004). *Nepal Human Development Report: Empowerment and Poverty Products*. Kathmandu: United Nation Development Report.
- Upreti, B.R. (2004). Land Conflict in Nepal: Peasants' Struggle to Change Unequal Agrarian Social Relation. *Community, Work and Family*. 7 (3): 371-394.
- Whitehead, A. (2002). "Tracking Livelihood Change: Theoretical, Methodological and Empirical Perspectives from North-East Ghana, Special Issue: Changing Livelihoods". *Journal of Southern African Studies*. 28 (3): 575-598. Downloaded from <http://www.jstor.org> on May 23, 2006.





# Land and Territory in the New Constitution of Bolivia\*

■ Esteban Sanjines Delgadillo\*\*

*“We, the Bolivian people – of plural composition, from the first times of history, inspired by the battles of the past, the anti-colonial uprising of the indigenous people, the independence of the State, the fights of the Bolivians for liberty, the marches of the indigenous people, the social and the union quarrels, the battle for water and the war of October, the fights for land and territory, and with the memory of our martyrs – do construct a new State.”<sup>1</sup>*

This excerpt from the preamble of the new Bolivian Constitution reflects the course that was chosen for the construction of the new Bolivia. The issues of water, natural resources, land and territory define the main pillars of the popularly required search for a new national pluralistic and communal state that is founded on the memory of the national uprisings. Admittedly, land and territory are the most important of these pillars for they have constantly been connected to the history of the republic of Bolivia as a great social demand. It is no coincidence that the battles lead by the indigenous heroes (Tupac Katari, Zarate Villca, among others) were inspired by the protection and restoration of their lands and territories. It is also no

coincidence that the core request of the Revolution of 1952 was about land and territory, as proven by the implementation of the Law of August 2<sup>nd</sup> one year later.<sup>2</sup> Neither is it due to coincidence that Land Reform persists time as the first and most important topic of the social agenda, thus resisting the various eras and political happenings since its enactment. In effect, the Land Reform was the core issue in the debate between social movements and the State, the latter being continuously dominated by elites, who advocated forms of capitalistic development based on the existence of private large-scale landed property.

Although the issue has constantly figured

---

\* This article is a translation of the Spanish article *Tierra y Territorio en la Nueva Constitución Política del Estado* written by Esteban Sanjines Delgadillo in March 2009. It was translated into English by Katharina Friederike Klein, M.A.

\*\* The author is lawyer and director of the department *Altiplano* of the NGO *Fundación TIERRA* in La Paz, Bolivia. Email to: e.sanjines@ftierra.org

in the public and political debates, a truly successful solution is still lacking. Many efforts were made in order to efficiently initiate the process of Land Reform, such as establishing legal means that attempted to create legitimate tools that would resolve this problem. These normative constructions were the product of agreements that inflected the economic activities which by then had reached the border of abysm. The first attempt was the (above mentioned) Law of 1953 which – as a result of its poor application – had to be overridden, an act that paved the way for the INRA Law of 1996 (Law of the National Institute of Land Reform).<sup>3</sup> In both cases the approbation was brought to perfection in the middle of social uprisings and political maneuvers guided by sectional and social class interests. Not even the Law of the Social Renewal of the Lease of the Land Reform<sup>4</sup>, which was enacted by President Evo Morales, could avoid having to pay this price for its being approved.

If there is a common denominator of the laws regulating the agrarian issue in Bolivia, it is that all are products of alliances in a polarized political context, in which all the parties strategically included “whatever was possible”. Against this background, it can be affirmed that the Land Reform is the succession of betrayed pacts, with the result of the agrarian act counterbalancing liberal ideals with social principles. It is a pattern in which the same actors always intervene: the poor fight the wealthy and the plot is always the same: die rather than surrender; the conclusion always being: negotiate rather than lose all.

Regarding all this, it is paradoxical that in the original version all the suggested acts did justice to a social tenor that would have

qualified them as a juridical paradigm in the context of comparative law; yet, the effects of the distorted implementation served as a catalyst for reorganizing the offensive search for a new law. As a result the Law of 1953 was legislated, which, based on its principles, the postulations it expressed, and first and foremost, the revolutionary process it engendered, was compared with legal acts as significant as the Mexican or the Cuban Land Reform. Nevertheless, the way its implementation was manipulated (mainly during the times of the dictatorial governments), converted it into the principal legal argument that was supportive of the creation of new large-scale landed properties in the State. As a product of this distorted implementation and with the idea of establishing an alternative, the “INRA Law” was enacted in 1996. This new law tried to give the Land Reform a new social dimension by including a series of implementation acts for indigenous peoples, in addition to introducing norms that allow the usage of technological mechanisms in order to regulate and reconnoiter property rights regarding land, and defining an ample catalogue of criteria for making the usage of the land more efficient and sustainable. Just like in the history of the Law of 1953, the enactment of the INRA Law meant the conclusion of a difficult period of political negotiations, with the corollary of a fragile agreement forming the new law. As time demonstrated, it is extremely difficult to consider anything regarding the issue of land as definitive and conclusive, particularly when it is product of an agreement. It was through the means of searching for and/or starting juridically ambiguous readings that those who succeeded seeking the State’s favor returned to “utilizing” the Law to give

<sup>1</sup> Preamble. Constitution of the Plurinational State of Bolivia. February 7, 2009. (New Constitution.)

<sup>2</sup> cf. Law no. 3464: Law of the Land Reform. August 2, 1953.

<sup>3</sup> cf. Law no. 1715: Law of the National Institute of the Land Reform. October 18, 1996.

<sup>4</sup> cf. Law no. 3545: Law of the Social Renewal for the Lease of the Land Reform. November 28, 2006.

advantage to one sector, which inevitably lead to the decline of the other. The effects of this devious implementation of the Law were to be seen in the results of the land redistribution and property titling process (the so called “saneamiento”), which are universally known.

Again, the victims with their betrayed hopes, searched for a scapegoat in some article of the law, but this time they were invigorated by the presence of a government of an indigenous origin. The critique of the INRA Law arose in the entire State, which planted the seeds of thought that a new legal norm was necessary. Once again, the modification of the law regarding land was suggested, with the intention of reentering the process of (realization of) Land Reform. The revolutionary principles that gave support to the idea did not change; they were the same as they were 55 years ago. Neither did the obligatory process change that an initiation of this kind has to pass: that is why – after the euphoria that accompanied the bill – a period of inevitable negotiation was entered. And once again, the same special interests were at work as in the decades before, with the same actors and the same plot: die rather than surrender. As a result of the negotiations, the new law – just as the others before – proposes to resume the process of Land Reform, however this time based on common support.

Strikingly, throughout the whole process of changes regarding the agrarian norms, only little has been modified in the Constitution itself, thus reflecting the modest importance given to that issue. For many authors, the permanence of a constitution is a principal condition – thus claiming that the more sustainability a constitution shows in terms of time, the more probable its implementation becomes. In the case of Bolivia, the old constitution maintained a certain stability for more than 40 years, yet it became inapplicable because its very core was

abolished by implementation acts. It might sound exaggerated, if not foolish, to say that an implementation act was capable of eliminating a constitution, nevertheless, that is what actually happened. The sequence of changes that occurred in the agrarian implementation act – as a product of processes of social reversal – produced the incorporation of legal concepts that signified true social achievements, but that lacked an effective constitutional backup (this is the case concerning land restoration, the economic-social function of the land, and the definition of the large-scale landed property, among others). Without doubt the amendments made to the law were indispensable for legislating, given the economic activities in which they were enacted, but their implementations were realized with the argument that their effectiveness could mean undermining the spirit of the constitution. This argument was frequently used by those who saw themselves at a disadvantage, those who found loopholes in the law, and thus used the argument for inventing a political tool that was applied when public institutions were being challenged – promoting an image of illegitimacy. Certainly, those entities of principles that were protected by the law in some cases went beyond the competencies assigned to them by the Constitution. In this way, the structural change on the on top-level (that is the elaboration and implementation of a new constitution) was justified.

There would be no lack of arguments for claiming that the irresolution of the land issue was the most important motivation for initiating the design of a new constitution; yet neither would there be a lack of evidence that the very same issue was the main cause for the failure of solving the agrarian task. The mere intention of planting the issue in the panel was enough to shatter the debate. The history of the conclusion of this process is well-known, and what is of interest is that the final product of the constitutional project

– overflowing of legitimism – had far to go before becoming official. In effect, for its successful implementation even more than the justice of its concept was required, as the cooperation of those who refused to debate the agrarian issue was indispensable. Their acceptance was an absolute condition without which the draft proposal would not have reached the status of the fundamental Law of the State. Once again, just like it had happened many times before concerning law, it became necessary to negotiate: the same well known actors were involved and the same plot was followed as all the times before. With the objective of isolating the proposal elaborated in the Constituent Assembly, the parties decided to install the negotiations in Congress, and just as before the agreements were brought to a close very discretely while each of the parties strategically worked in their respective interests, but still compromising in order not to lose.

There is a Chinese saying: *“100 years are not enough for evaluating history”* and this is very true. Who, at this point, can judge the value of that which has been completed thus far, in assessing the success of a true Land Reform? And who can deny that our way of advancement is the constant process of political renegotiations that culminate in the periodic change of the law? It is evident that we now have a new Constitution. What could be improved is another topic, and thus the only thing that is of importance now, is to understand the new Constitution and to by all means implement it.

### **The Normative Construction of the Constitution**

The third part of the abrogated Constitution of the State – with respect

to the implementation acts – regulated in its Third Partition the “Agrarian Farmer Act”.<sup>5</sup> The basic concepts of this chapter were inspired by the Law of 1953; thus the fundamental principle was: “the land belongs to the person who works it”. This premise was the doctrinal guide throughout history, and its spirit did not leave room for doubt about what the aim of the agrarian issue was. Starting from this principle a series of generic precepts with constitutional status was claimed. It was stated that the State should transform itself into the supervisor of the rural development, and that it should be provided with ample faculties for redistributing land and with the competence for regulating the exploitation of natural resources. By the same token, it was determined as a function of the State to apply plans of colonization, to grant credits in order to foster farmers, and to attend their education. Regarding this aspect, it is necessary to stress that the aspect of indigenusness was not mentioned. Its absence was intentional and responded to the political-philosophical context at the moment of implementation of the Constitution, for then the liberal principles were mixed with the revolutionary ideals that inspired the National Revolution of 1952 and sought to eliminate the concept of indigenusness in favor of the construction of a new class of farmers. In effect, the juridical origin of this intention can be found in the Law of the Land Reform of 1953 that – incorporating the central objective of the National Revolution of 1952 – planned the transformation of the feudal systems of land tenancy and exploitation, thus stimulating an increase in rural productivity by means of liberation of the productive forces, with the objective of succeeding with capitalistic development. The term

<sup>5</sup> cf. Third Partition: Agrarian Farmer Act. Constitution of the State of Bolivia. 1967. (Abrogated Constitution.)

<sup>6</sup> Urguidi, Arturo. *Temas de reforma agraria*. La Paz, 1976. p. 12.

“indio” was replaced by the word “farmer” with the intention of establishing the fundament of a new social class. From the legislators’ point of view of that time, the community was supposed to receive “the change of the system of the agrarian property, from the feudal-colonial to the liberal- capitalistic, in order to induce the formation, the emersion, and the success of modern agrarian enterprises in the countryside; the indigenous community had not to oppose itself in this spirit but was to align its actions and its development with its conversion into a modern enterprise by forming cooperations.”<sup>6</sup>

The document of the Constitution was implemented in 1967 by the government of René Barrientos Ortuño and was altered at six occasions, yet the way in which the question of indigenous rights was addressed, was maintained without changes for more than 25 years. Thus the issue was kept in encapsulation in the Agrarian Farmer Act. This legal formality – that already was suggested in the process of the elaboration of the constitution back in 1953 – was changed only recently in 1993. However, the change did not require the inclusion of indigenoussness at a different structural level (that is surpassing the agrarian act); what changed was the theoretic focus; for the first time the explicit decision to demonstrate this aspect in a constitutional form occurred. This particularity marked a substantial difference in that – from the promulgation of the modified text in 1993 – the topic of indigenoussness adopted an unusual relevance.

To a great extent the conceptual inversion is owed to the signing of the “Tribal People’s Convention” (Agreement no. 169) of the International Labour Organization (ILO); since Bolivia was a signatory of this agreement, it saw itself obliged to

recognize the existence of the indigenous peoples by acknowledging them a series of rights and most of all a territory. The juridical construction that originated this instrument of international order required modifying the text of the Bolivian Constitution. The way in which the recognition of the indigenoussness was improved, was to be seen in the text of bullet point of Article 171 of the abrogated Constitution. Apart from the mentioned changes in the Constitution the agrarian issue was not altered, a fact that allows us to affirm that in more than 50 years of implementation of the now abrogated Constitution, the only aspect modified was the vision of the topic of indigenoussness.

### **Land and Territory in the New Constitution of the Bolivian State (CPE)**

The current CPE implies a totally renovated legal body, in which new entities of legal principles have been integrated, based on a new juridical structure. However, the topics approached in the new CPE had already been addressed by the implementation act before. The agrarian issue is considered from a holistic point of view based on a modern doctrinal approach, i.e. it is not restricted to the agrarian perspective (different kinds of properties, property rights, exploitation of the land etc.) but exceeds the latter searching to integrate all the activities that take place in the countryside. This way the central feature of the anterior legislation was corrected as the norms related to tenancy, use and disposition of land and natural resources are regulated by different jurisdictions. On the one hand, the Law of Environment<sup>7</sup> had standardized its own competencies. On the other hand, the Code of Mining<sup>8</sup> had legislated its own

<sup>7</sup> cf. Law no. 1333: Law of Environment. April 27, 1992.

<sup>8</sup> cf. Law no. 1777: Code of Mining. March 17, 1997.



jurisdiction. In the same way, with its publication the Forestry Law<sup>9</sup> had established another authority.

The agrarian issue can not be reduced to the study and solution of the problem of property and land distribution, but it has to be viewed integrally, patronizing the agrarian, livestock, and forestry activities like a whole without disassociating them from their close connection with the environment as a total. Following this logic, the new CPE addresses the agrarian issue within a single partition headed “Environment, Natural Resources, Land and Territory”. These three large topics are incorporated in a single partition where each of them is regarded and explained in a series of nine continuing chapters.

“Land and Territory” is the heading of one of the chapters.<sup>10</sup> No longer is it addressed as an implementation act like it was in the abrogated constitution. “Land” now has its place in the main body of the constitutional text and thus – purportedly – is under the patronage of its conceptually subordinated issue (the agrarian issue); in the same way “Territory” was included in this part of the constitutional structure. The combination of the two topics (land and territory) in one chapter is not new, in fact the abrogated CPE already worked with this grouping, but what has been changed is the way in which the topic of indigenusness has been put in the center of interest.

### The Indigenous Territory

The abrogated Constitution legislated in a single article different legal principles which – when referring to indigenusness (as the object of interest) – did so by condensing it into only one paragraph without giving credit to its concept or competence.

Personal rights – such as the usage of natural resources, territorial entitlements, the recognition of capacities, and the applying of implementing legislations – were shoved into one “super-article” (Article 171). This juridical disorganization arose from a series of dissensions, the most important of these being the assumption that changing the agrarian law could do justice to the aspect of indigenusness. In contrast, the new constitution assesses the topic of indigenusness in an appropriate way, by incorporating its significance transversally throughout the whole document, thus only conceptualizing the definition of territory and natural resources in the respective part dealing with these matters:

*Article 403. I. The territory of aboriginal indigenous farmers shall be acknowledged as a holistic entity including the right to land, the exclusive utilization and exploitation of renewable natural resources complying with the conditions determined by law; the right to the previous and informative consultation, and the participation in the gain of the exploitation of non-renewable natural resources that are encountered in the territory, the competence to apply their own norms administered by their representing social structures, and the definition of their development in accordance with their cultural criteria and principles of a way of life in harmony with nature. The territories of aboriginal indigenous farmers may be composed of different communities.*

*II. The territory of aboriginal indigenous farmers comprehends areas of production, areas of exploitation and conservation of natural resources, as well as regions of social, spiritual, and cultural reproduction. The law is to establish an appropriate approach to secure the recognition of these rights.<sup>11</sup>*

<sup>9</sup> cf. Law no. 1700: Forestry Law. July 12, 1996.

<sup>10</sup> cf. Ninth Chapter: Land and Territory. Environment, Natural Resources, Land and Territory. Constitution of the Plurinational State of Bolivia. February 7, 2009. (New Constitution.)

<sup>11</sup> Article 403. Ninth Chapter: Land and Territory. Environment, Natural Resources, Land and Territory. Constitution of the Plurinational State of Bolivia. February 7, 2009. (New Constitution.)



The aboriginal indigenous territory is a concept that exceeds the right to the tenancy of land. It refers to the utilization and control of the environment in accordance with the social and cultural development of the indigenous people and/or community. Hence, the organization of the territory implies the authorization to administer the natural resources found within its borders. Therefore, a distinction between the rights to renewable and non-renewable resources is made.

In the case of the renewable resources, the right to utilization is claimed to be “exclusive”, that is to say, they may only be used by the indigenous people themselves. A first analysis of the law suggests that the exclusiveness signifies the impossibility of granting concessions concerning the exploitation of renewable resources at third parties, as well as the impossibility of exploiting the resources assigning proceeds to somebody who is not part of the indigenous people.

Based on this statement, this normative paragraph could be considered to establish segregating and exclusionary rights; that is to say that the term exclusiveness, which attempts to prevent the problem of random exploitation to the disadvantage of the indigenous people, legalizes the exclusion of non-indigenous people. There is no doubt that the paragraph can provoke extreme reactions; thus it will be the task of the implementation act to legislate the aspect unambiguously, to avoid the possibility of multiple interpretations.

Regarding the non-renewable resources, the norm is more explicit, declaring mandatory that the exploitation must pass through a period of information and consultation. However, it is not established whether the result of this consultation is to have a binding character – a facet which would indeed be crucial for the peoples concerned in the moment of coming to a decision. This way the issue of indigenusness is brought to a close in the

respective part of the CPE; topics related to their personal rights, institutions and jurisdictional space of the indigenusness are addressed in other sections of the text.

### The Principal Precept of the Land Issue

Work as a source of acquisition and maintenance of land is a concept that has maintained its validity since the beginning of the Land Reform process in 1953; nevertheless its constitutional integration was completed only eight years later in 1961. For the ideologists of the National Revolution it was necessary to find a formula that allowed to defy the unequal land tenancy and the flawed system of exploitation of this resource.

In consequence, the agrarian program at this point suggested a collocation of work as the central element for legitimizing the holding of land as property. This pillar of the Land Reform has a continuing presence in the current CPE.

*Article 397. I. Work is the fundamental source for the acquisition and maintenance of agrarian property. Properties must comply with their social function or their economic-social function in order to guard this right in concordance with the quality of property.*

*II. The social function is to be understood as the sustainable utilization of the land through the people and communities of aboriginal indigenous farmers, just like it is realized concerning small properties, and it constitutes the source of subsistence, well-being, and socio-cultural development of its tenant. With regard to the social function the respective norms of the communities are to be acknowledged.*

*III. The economic-social function is to be understood as the sustainable use of the land for the development of production activities, according to the capacity of its greatest utilization for the gain of the society, the collective interest, and that of its tenant. The operating property is subject to revision in concordance with the law, in order to verify its conformance with the economic-social function.<sup>12</sup>*

It is the working of the land, that accords the right to be tenant of land, and consequently the absence of this condition authorizes the State to take away the lands from the indigenous ownership of the Bolivian people for the purpose of redistribution. In this case, the legally protected commodity is the verity that the resource has to strategically seek to succeed with the social development and wellbeing. The constitutional impartation that work is the prerequisite for property-holding, is directly linked to the concept of the social function and the economic-social function.

The terms social function and economic-social function become the conceptual base for initiating limitations to the inviolable land property right. Therefore, both terms are related to the aspect of work; thus obligatory for the property-holding of land is the existence of investment, commitment, and production. It is worth mentioning that this juridical technique was already present in the INRA Law of 1996, which for the first time established the necessity to incorporate new forms of exploitation of the land given the criteria of efficiency, rationality and sustainability.<sup>13</sup>

Nevertheless, this formula does not show the traditional forms of verifying the social function. Within the community, the tenancy of land is administrated from a collective standpoint, in that the members of the organization must justify their permanence by fulfilling a series of obligations, the compliance of which is controlled precisely by the organization itself. That is to say, it is not enough to possess documents (of ownership) and work the land, but in order to maintain the legitimacy of the property-right to land

within the community, it is also mandatory to comply with a series of consuetudinary obligations (fulfill a charge of authority, take part in collective works etc.). The fact that the compliance with the traditional obligations is of such great importance within the community with regard to the legitimization of property, demonstrates the necessity to acknowledge that the concept of the social function has been amplified, not only concerning its content, but also regarding the competency for its control.

### Types of Property-Holding of Land

With regards to the topic of land, the CPE begins to recognize the fact that in the agrarian sector, individual and collective property rights concur without one necessarily overriding the other. Both types of property holders co-exist and work the land, just as both demand from the State the recognition and protection of their rights as licit elements that offer juridical security. This way the CPE acknowledges the existence of the rights by establishing the theoretical framework that limits the exclusive use of land, with the intention of defying the public interest over the private, and thus uses the concept of the social function and/or the economic-social function as prerequisites for the utilization of the land in the sense of the following article:

*Article 393. The State acknowledges, protects and guaranties the individual and the communal or collective property-holding of land, in such a way that it respectively fulfills a social function or an economic-social function.*<sup>14</sup>

What sticks out in this article, is the idea that the property-holding of land is not an unlimited right, but that it must fulfill a

<sup>12</sup> Article 397. Ninth Chapter: Land and Territory. Environment, Natural Resources, Land and Territory. Constitution of the Plurinational State of Bolivia. February 7, 2009. (New Constitution.)

<sup>13</sup> cf. Law no. 1715: Law of the National Institute of the Land Reform. October 18, 1996.

<sup>14</sup> Article 393. Ninth Chapter: Land and Territory. Environment, Natural Resources, Land and Territory. Constitution of the Plurinational State of Bolivia. February 7, 2009. (New Constitution.)

social purpose, as well as its exploitation must strive for a collective gain. Imposing limitations to the utilization of land is nothing new, in fact, even laws as old as those of the ancient Greek or the Roman entailed restrictions to the use and access to land with the intention of evading the accumulation of the resource in the hands of an elite few and with the objective of avoiding the random use of that which was considered a state commodity.

Continuing, the CPE specifies the co-existence of the generic forms of property-holding (individual and collective) by classifying the two kinds of agrarian properties.

*Article 394. I. The individual agrarian property is classified into the small, the medium and the enterprise category with respect to its respective surface, the production, and the criteria of development. Its maximum extensions, characteristics and forms of converse will be regulated by law. Legally acquired rights of individual property holders, whose estates stand in the interior of territories of aboriginal indigenous farmers, are guaranteed.*

*II. The small property is indivisible, constitutes unseizable family heritage, and is not subject to the payment of taxes for the agrarian property. The indivisibility does not affect the right to hereditary succession under the conditions established by law.*

*III. The State acknowledges, protects, and guarantees the communal or collective property that compasses the territory of aboriginal indigenous farmers, the aboriginal intercultural communities and the communities of farmers. The collective property is declared indivisible, timeless, unseizable, inalienable, and irreversible, and is not subject to the payment of taxes for the agrarian property. The communities may be entitled (collective property-holders) acknowledging the complementarity of*

*collective and individual rights with regards to the territorial unity with an aboriginal indigenous farming identity.<sup>15</sup>*

The individual property is sub-classified into the small, the medium and the enterprise category. The small entity is understood as the area that allows the survival of the family in the sense of subsistence economy providing only the minimum conditions necessary for subsistence. This being a minimum space for surviving, it is declared an unseizable family heritage; this aspect is important when the small property ceases to be an individual right in order to convert itself in the right of a group of persons: the family. This is a modern conception of property and has the purpose of assuring the residence and subsistence of a group of relatives, with the particularity that the transmission of the property right between members of the same family tribe is possible, this detail giving the notion of “family”. Concerning the family, a series of norms for its protection was appointed to the legally protected commodity (the property-holding of land): like the unseizability and the indivisibility referring to the case of succession. In agreement with the means of protection of indivisibility, Article 400 of the CPE explicitly prohibits the division of land into superficies smaller than the ‘small property’.<sup>16</sup>

On their part, the medium and enterprise properties are those who must comply with the economic-social function. This means that their activities must prioritize the well-being of the society and in order to meet this objective their activity must procure the generation of initiatives, agrarian mechanization, and production for the market, without affecting the

<sup>15</sup> Article 394. Ninth Chapter: Land and Territory. Environment, Natural Resources, Land and Territory. Constitution of the Plurinational State of Bolivia. February 7, 2009. (New Constitution.)

<sup>16</sup> cf. Article 400. Ninth Chapter: Land and Territory. Environment, Natural Resources, Land and Territory. Constitution of the Plurinational State of Bolivia. February 7, 2009. (New Constitution.)

environment. Due to their entrepreneur characteristic, they are subject to the payment of taxes and other obligations that apply to this kind of legal body.

Referring to the collective rights to land, it was established that they are treated under the figures for Properties of Communities and Territories of Aboriginal Indigenous Farmers, two kinds of collective properties linked to legal bodies that are collective as well and show the same hierarchy.<sup>17</sup> Both are beneficiaries of the same norms of protection, with the intention of allowing their cross-generational tenancy, as well as the development of their property-holders as (administrative) collectivities in the course of time. Equally, responding to the reality of the agrarian sector (most of all in the Andean region where shared property rights between communities and the families living in these exist), mixed land titling is acknowledged, which implies that family-individual rights are unyieldingly linked to the community. This is to say that where family possessions exist within the borders of a community, they will be respected under the rights of control and regulation of the community in direct correspondence with the family.

### Forms of Access

Half a century after the beginnings of the Land Reform, the inequality regarding the tenancy of land is of unquestionable evidence. According to the data of the Ex National Board of the Land Reform, the community land that was endowed compasses 21.45 percent of the superficies distributed altogether, 43.90 percent of the beneficiaries profiting from it. On the other hand, the Agricultural Cooperation claims

that 40 percent of the land were distributed in favor of 2 percent of the beneficiaries. The medium property accounted for 28 percent of the distributed land and benefited 16 percent of the donees; together the medium and the enterprise size properties accounted for 68 percent of the altogether distributed superficies and for 89 percent of the superficies of private individual properties (44.1 million hectares). The small property and the farming estate together made up for 8 percent of the distributed land, which was given to 36 percent of the beneficiaries, if summed up accounting for a total of 11 percent of the individual property.<sup>18</sup> This information is self-explanatory. However it is worth stressing that among those who profited the least are the women that form a part of the indigenous and farming peoples and communities; they as a result being the most excluded of the excluded. With the purpose of balancing this status the new CPE states:

*Article 395. I. The public lands are to be donated to aboriginal indigenous farmers, aboriginal intercultural communities, Afro-Bolivians and communities of farmers that do not possess land or that possess an insufficient amount, in compliance with a state policy that regards ecological and geographical realities, just like the social, cultural and economic necessities. The endowment is to be realized in agreement with the policies for a sustainable rural development and women's right to access, distribution, and redistribution of land without being discriminated against for cause of their marital status or family affiliations.*

*II. Double endowments and buying-selling, barter, and endowment of distributed lands is prohibited.*

*III. For being opposed to the collective interest, it*

<sup>17</sup> cf. Ninth Chapter: Land and Territory. Environment, Natural Resources, Land and Territory. Constitution of the Plurinational State of Bolivia. February 7, 2009. (New Constitution.)

<sup>18</sup> cf. National Institute of the Land Reform. Annual Report. La Paz, 2007. This report is based on data from the Ex National Board of the Land Reform and the Agricultural Cooperation. All numbers given refer to the year 2007.



*is prohibited to obtain rent for the speculative utilization of the land.*<sup>19</sup>

Going by this norm, the only ones to access the public lands are indigenous people and farmers. This code is not new, but the idea of this positive exclusion comes from the INRA Law that determined the indigenous and the farmers as the groups favored in the process of endowment. In this context it is important to mention that regarding these preferences, according to the annual report from 2007 of the INRA, about 35 percent of the national territory has been demanded under the modality of aboriginal collective lands.<sup>20</sup> This information is noteworthy, because it may be used for carrying the devious affirmation that the new large-scale landed properties were in the hands of the indigenous people. In any case, it is important to keep in mind that policies that are applied with distinguishing preferences, i.e. favoring one group – independently of their good intentions – to say the least, will always create differences as regards the others.

### **Prohibitions and Limits of Land Use**

Under the principle that the property-holding of land is not an unrestricted right, the new CPE imposes a series of prohibitions regarding use and disposition of the private individual properties. The first of these is aimed at limiting the transferences concerning land and thus a norm was designed that allows the State to control the “bargain” in relation to land.

*Article 396. I. The State is to regulate the market of land, thus evading the accumulation of larger superficies, as recognized by law, and at the same*

*time avoiding the division of land into superficies smaller than the one established for the small property.*

*II. Foreigners can by no means acquire lands from the State.*<sup>21</sup>

The purpose of this article is to regulate the selling of those lands that were consigned for free at individual persons via endowment. The argumentation for imposing this restriction is based in the fact that land, consigned at no charge to a person with the intention that they should exploit the land for the gain of the society, cannot be used for accumulating riches. In the last decade, these bargains in relation to land have reached an alarming level, not only because the augmentation of these sales, but most of all for the millions of dollars invested. These transferences are found to be concentrated in the most productive lands of the departments of Santa Cruz, Beni, Pando, and Chuquisaca, and given the current international economic situation, with its daily requirement of alternative forms of energy with ever growing urgency, it is to be expected that the number of these bargains will even increase more.

Another aspect that promoted the inequality regarding the tenancy of land was the consolidation of the large-scale landed property, arising from the inadequate application of the law pertaining to the Land Reform of 1953. The large-scale landed property is the result of double endowments that were – for many reasons – illegally accomplished. According to the data from the INRA (2006), 3,142 people obtained double endowments, summing up to a superficies of 8.6 million hectares; 482 had access to threefold endowments

<sup>19</sup> Article 395. Ninth Chapter: Land and Territory. Environment, Natural Resources, Land and Territory. Constitution of the Plurinational State of Bolivia. February 7, 2009. (New Constitution.)

<sup>20</sup> cf. National Institute of the Land Reform. Annual Report. La Paz, 2007.

<sup>21</sup> Article 396. Ninth Chapter: Land and Territory. Environment, Natural Resources, Land and Territory. Constitution of the Plurinational State of Bolivia. February 7, 2009. (New Constitution.)

equaling a superficies of 3.1 million hectares in total; 174 received quadruplicate endowments constituting a superficies of 1.6 million hectares, and finally 72 persons obtained five or more endowments, amounting to a superficies of 844 thousand hectares. These figures add up to a number of 4.172 beneficiaries holding land of an extension of 14.3 million hectares.<sup>22</sup> However, the majority of these multiple endowments took place in favor of the beneficiaries in the departments of Santa Cruz, Beni and the north of La Paz.

In the abrogated Constitution the large-scale landed property was a figure whose existence was only superficially legislated, as it had only established its recognition, yet it was neither prohibited nor prosecuted. Nor was it conceptualized and defined, thus making the participation of the agrarian implementation act necessary in order to identify it. The current CPE defines the large-scale landed property as follows:

*Article 398. The large-scale landed property and the double endowment are prohibited for they oppose the collective interest and the development of the country. As large-scale landed property is understood the unproductive tenancy of land, the land that does not comply with the economic-social function, the exploitation of land by the application of a system of debt bondage, semi-servitude, or slavery as a working situation, or the property that exceeds the scaled maximum superficies established by law. By no means may the maximum superficies exceed 5000 hectares.<sup>23</sup>*

The article labels the large-scale landed property in a sufficient way, thus surpassing the classic concept of a large extension of land. The term is improved by relating the large-scale landed property to a series of actions and deeds opposing the law, all of

which principally refer to the utilization of the land. The unproductive tenancy, the non-compliance with the economic-social function, and work situation of debt bondage are deeds of illegality, independent of the landholder's property size. This could be the large-scale landed property-holder who hoards lands, but or a medium property-holder who does not comply with the economic-social function, or even a small property-holder who maintains working conditions of debt bondage or who keeps his parcel of land unproductive.

In addition to the anterior reservations, this article establishes the large-scale landed property as the possession of land that exceeds 5000 hectares in size. This code is to be considered a great advancement in the process of Land Reform. It is a tool, yet its use is limited to the fulfillment of certain prerequisites, as will be analyzed in the following.

### **Exceptions of the Application of the Norm**

During the process of negotiation in Congress for allowing the implementation of the new CPE, a series of juridical codes were aggregated that made possible the implementation of the law of the approbatory referendum of the CPE. These changes are considered to be the price that had to be paid for the implementation of the law and they are juridical consents that protect social interests.

*Article 399. I. The new limitations scaling the agrarian property are valid for estates that are acquired after the coming into effect of this Constitution. In terms of the non-retroactivity of the law, the rights to agrarian possession and property are acknowledged and accepted in agreement with the law.*

<sup>22</sup> National Institute of the Land Reform. Annual Report. La Paz, 2006.

<sup>23</sup> Article 398. Ninth Chapter: Land and Territory. Environment, Natural Resources, Land and Territory. Constitution of the Plurinational State of Bolivia. February 7, 2009. (New Constitution.)



*II. Exceeding superficies that comply with the economic-social function will be expropriated. The double land titling treated in the anterior article refers to the double endowment officialized by the National Board of the Land Reform (CNR4). The prohibition of the double endowment does not apply to the rights legally acquired by third parties.<sup>24</sup>*

The legislative principle that was used to structure this article is that of the non-retroactivity which is a juridical principle due to the circumstance that laws do not affect facts anterior to their coming into effect. Under this principle, the limit of 5000 hectares for the size of the agrarian property is only applicable for those properties endowed or attributed in the future, thus not even those properties that are currently in the process of transaction of land titling have to comply to this prohibition.

The second part of this article also constrains the application of the other code referring to the tenancy of land, by establishing that “the prohibition of the double endowment does not apply to the rights legally acquired by third parties.” This way the interests of those people who bought lands originating in double endowment were protected. This provision shields hundreds of sub-transferees, such that they are excluded from being penalized for possessing lands of illegal origin.

### **Juridical Instruments for the Restoration of Lands**

Reentering the process of Land Reform does not bring to naught the whole system of land tenancy that exists in this country. The valid property structure responds to a process that allows the concurrency of individual and collective rights. This way

the new CPE initiates an entity of juridical instruments for the purpose of restoration of lands from people who broke the essential principles of a social living together.

*Article 401. I. The non-compliance with the economic-social function of land or large-scale landed property-holding are causes for reversion, and the land will pass into ownership and property of the Bolivian people.*

*II. The expropriation of land proceeds for cause of public necessity and utilization, and is proceeded with the previous payment of a just indemnification.<sup>25</sup>*

As it was stated, land is not an absolute commodity, nor an asset like any other. It is part of the heritage of the State and thus its utilization must benefit society. This is the reason why it is linked to certain prerequisites that are obligatorily. This fact generates respect for the property, making it opposable by third parties. In this context, the respect for the norm on the part of the landholder is the legal support that provides juridical security for the tenancy of land.

In view of the non-compliance with these limitations, it is logical that the State – in full exertion of its privileges and obligations – employs legal mechanisms that permit reclaiming lands that are being used in a way opposed to the establishments of the law. The kind of means taken, definitely must not be confused with acts of confiscation, since they are only applied if that person allegedly does not comply with the law. This way the reversion of land is perfectly legitimized and will be carried out in cases of non-compliance with the economic-social function or tax evasion and verified conditions of debt bondage linked to the land tenancy.

<sup>24</sup> Article 399. Ninth Chapter: Land and Territory. Environment, Natural Resources, Land and Territory. Constitution of the Plurinational State of Bolivia. February 7, 2009. (New Constitution.)

<sup>25</sup> Article 401. Ninth Chapter: Land and Territory. Environment, Natural Resources, Land and Territory. Constitution of the Plurinational State of Bolivia. February 7, 2009. (New Constitution.)

## Conclusion

The new Constitution of Bolivia indicates a new stage in the national agrarian regulation. The CPE seeks to successfully bring to an end the Bolivian Land Reform by giving it an indigenous focus. However, the implementation of the CPE is caught in a national conflict that until now has managed to impede the carrying out of the announced changes, and even has gone so far as to put at risk the national democratic governance. The difficulty in applying the Law hinders the State to comply with the intended redistribution of the unproductive large-scale landed properties.

This is due to the fact that the Government still lacks the necessary political conditions for advancing efficiently in the process of the equitable, productive, and sustainable distribution of the land. Historically, the owners of the large-scale properties, who live in the wealthiest region of Bolivia, have always vehemently rejected the Land Reform. In doing so, they successfully prevented the conclusion of the revolutionary process (i.e. the Land Reform begun by the National Revolution). Hence, after almost 60 years, the Bolivian Land Reform continues being a task waiting to be resolved.

## References

- Constitution of the Plurinational State of Bolivia. (2009). [CPE]
- Constitution of the State of Bolivia. (1967). [Abrogated Constitution.]
- Law 3464. (1953). Law of the Land Reform.
- Law 1333. (1992). Law of Environment.
- Law 1715. (1996). Law of the National Institute of the Land Reform.
- Law 1700. (1996). Forestry Law.
- Law 1777. (1997). Code of Mining.
- Law 3545. (2006). Law of the Social Renewal for the Lease of the Land Reform.
- National Institute of the Land Reform. (2006). *Annual Report*. Retrieved from: <http://www.inra.gob.bo>
- National Institute of the Land Reform. (2007). *Annual Report*. Retrieved from: <http://www.inra.gob.bo>
- Uriguidi, A. (1976). *Temas de reforma agraria*. La Paz: Juventud.



# Constitutional Approaches to Land Reform: Lessons from Other Developing Countries

■ Ashraf Hussein<sup>++</sup>

Nepal today is in a historical moment where the Constituent Assembly is conducting series of thorough discussions on the formulation of the new constitution of Nepal. This article aims to contribute to the discussions on the constitutional provisions regarding land reform in Nepal. It focuses on some of the most burning issues within the Nepali political debate and attempts to relate them to the constitutional experiences of some of other developing countries. The information in this article comes from the constitutions of South Africa, Brazil, and South Korea as well as from the Interim Constitution of Nepal. The aim is not to make a comparative study, but rather to see how those countries tackled the issues of land reform in their constitutions and how Nepal could benefit from their experiences.

## Right to Private Property

Most of the constitutions throughout the world make the right to property a component of the basic human rights. However, in some constitutions, those rights are limited either for the purpose of land reform or for the purpose of

property fulfilling social function. As the Brazilian constitution stipulates in Article 184 “*It is incumbent upon the Republic to expropriate for social interest, for purposes of agrarian reform, rural property which is not performing its social function*” (Brazil Constitution, 1993, adopted in 5 October, 1988)

We will find the same spirit in the constitution of South Korea where Article 23 (1) stipulates “*the right to property of all citizens is guaranteed. Its contents and limitations are determined by law*”. But on the other hand, however, we find in Article 23 (2) of the same constitution “*the exercise of property rights shall conform to the public welfare*”. The same idea is found in the new constitution of Bolivia (2009) where the right of private ownership of land is conditioned by the fact that this right should “*accomplish a social or eco-social function*” (Article 393) (Gomez-Saavedra, 2009).

It is clear from the diversity of the above examples that regardless of the ideological nature of the constitutions of the country (two of the above countries – Brazil and South Korea – are capitalist in nature, while Bolivia is leaning towards a socialist system), the idea that “property” should perform

---

<sup>++</sup> Mr. Ashraf Hussein is a land rights advisor at CSRC / MS Nepal.

a social function is a common denominator. It is the idea of the social function of property rights that legitimizes the support for redistributive land reform. The social nature of land as a main source of livelihood for the poorest segments of a society makes it not to be treated in the same way like other sources of wealth that are human made and not a gift from the nature.

### **Constitutional Approaches to Compensation**

In this section, I shall attempt to analyze how constitutional provisions have affected the outcomes of redistributive land reform in some developing countries whose constitutions have adopted a policy for land reform.

#### **South Africa**

In the pre-apartheid South Africa, freedom of ownership, movement, residence, association, expression and many other civil and political liberties were the privileges of the whites only. However, the institutions and practices that characterized and legitimized these conditions had their origins in an era that predates apartheid. They stretch far back into the colonial period, with their roots in the original activities of the 18th and the 19th century Dutch and British settlers and the laws they enacted. Most of these ‘activities’ amounted to struggle over land, and gradually, first the Dutch and then the British colonizers, forcefully occupied most of what is now South Africa. This control was legally ratified, and the subsequent forced removals of Africans were legitimized by the 1913 Natives Land Act, 35 years before the legal institutionalization of apartheid in 1948. This Land Act reserved 7 percent (increased to 13.6 % in 1936) of South Africa’s land for ‘native reserves’ and prohibited Africans from buying land elsewhere. The 1913 Land Act was

defended under the new racial ideology of ‘segregation’ but had as much to do with the preservation of a large pool of cheap labour for white business and farming interests. This historical context has resulted in a situation where the white South Africans, who constitute 13 percent of the population, own 87 percent of the available land (Hamilton, 2006)

It was against this background that land redistribution became a major issue in the negotiations on ending the apartheid regime and the writing of the new constitution of 1996. The constitution has tried to establish redistribution of land to the majority of black South Africans. In that spirit, the constitution stipulates three areas of concern, and there are now, as a result, three branches of land reform:

- a) the restitution of land rights for those who lost their rights as a result of the 1913 Land Act;
- b) land redistribution to meet vital housing and subsistence needs and to broaden the base of commercial agriculture; and
- c) the recognition of tenure for farm dwellers and others who have insecure tenure, due either to racially-discriminatory policies of the past or to ‘traditional’ forms of communal ownership (Hamilton, 2006).

Although these provisions are considered pro-poor and could contribute to more just distribution of land, there are number of other issues that have to be taken into consideration during decisions over expropriation and compensation. There are five issues listed under subclass 3, i.e., 25 (3), but two of them are of most relevance here: (a) ‘the history of acquisition and the use of the property’; and (b) ‘the market value of the property’ (Constitution of South Africa, 1996). The stipulation to consider the market value of the property has become a policy, especially in the area of land redistribution, but the

state simply does not have the funds for this process. In addition to the lack of funding, the failure of courts to decide on the amount of compensation deserved, has delayed the process of expropriation and redistribution.

This delay has resulted in a situation where the stated policy of the African National Congress (ANC) government to redistribute 30 percent of commercial agricultural land in South Africa by 2009 was recently revised to 2015. It has fallen way short of this target: by the third quarter of 2004, only 3 percent of the agricultural land had been transferred (Cousins, 2004, cited in Hamilton, 2006). The landless South Africans have had to wait for the government to find the financial recourses to compensate the elite white population.

### **Brazil**

In the constitution of Brazil, the issue of compensation has been treated in a more detailed manner. It has also adopted the idea of compensation for the expropriation of property for the purpose of land reform (Article 186 {0}), but in an attempt to sustain the speed of the redistributive land reform, the constitution has obliged the government to present each year the budget necessary for the compensation in order to guarantee the continuity of the program (article 186 {4}) (Brazil Constitution, 1993). The constitution has also stipulated that the compensation has to be in a form of government debt bonds. However, it has been realized that the idea of compensating the landowners could lead to a long-term debt for the Brazilian government, and that the speed of the redistribution process could also slow down.

### **Nepal**

It is with this information of other countries' experience that the debate in Nepal on the issue of compensation should be discussed. If compensation

requires financial resources that are not available to the government, insistence on obligatory compensation might result in the inability of the government to implement redistributive land reform, particularly should it be decided that the compensation has to be in cash and on the basis of market value. The Interim Constitution states that the compensation for land is a constitutional right for the landlords affected by any future land reform: *"There shall be given compensation for any property requisitioned, acquired or encumbered by the state in the course of enforcing a scientific land reform programme"* (Interim Constitution of Nepal, 2007)

There are some constitutional approaches to deal with this gridlock in the new constitution of Nepal:

1. The first is to consider the compensation against government expropriation of private property in general, but not connecting this principle with land reform. One way could be regarding the protection of property rights in general and leaving the whole issue of compensation to the agrarian reform law that will come after adopting the new constitution.
2. The second is to differentiate, in regards to the principle and amount of compensation, between the landlords who are within the land ceiling of existing laws and those who should not be compensated because their ownership of property exceeds the existing ceiling. Also, distinction should be made between the absentee landlords and those who cultivate the land by themselves. Another important distinction that needs to be made is between the vacant unutilized land subjected to land reform and the productive land cultivated by the landlord and his family. The constitution can simply confine the right for compensation for those landlords who have abided by the existing laws in terms of land ceiling and land use.



3. If compensation is to be made, it is important to avoid cash compensation or any form of future debt to the government. The compensation could instead take the form of shares in government owned projects and industries.

### Tenancy and Tenure Issues in Constitution

The Interim Constitution of Nepal has put the issue of land reform in the following way: *“to pursue a policy of implementing a scientific land reform programme by doing away with feudalism in all its forms”*. The problem as we know is how to define what “scientific land reform” is? And also, how to define “feudalism” that the land reform should do away with? The choice of the wording of the land reform articles in the Interim Constitution has been intentionally general in order to avoid any political disagreements among the political parties. But at the end of the day, Nepal’s land reform has to choose its own model. Should it follow the idea of canceling any form of tenancy and giving land to the tillers, just as the South Korean constitution has stipulated? The South Korean constitution states very clearly that *“The State endeavors to realize the land-to-the-tillers principle with respect to agricultural land. Tenant farming is prohibited”*. (Constitution of Korea, 1987, Adopted in 17 July 1948).

From this constitutional provision, it becomes clear that self-cultivation is a necessary condition for ownership of land, implying that an individual could own agricultural land only if she/he cultivates or manages land for herself/himself. Secondly, even in case of self-cultivation/management, an ownership of a maximum of 2 acres is allowed, and thirdly, tenancy arrangement and land renting are legally prohibited (ibid.).

Or should Nepal follow the idea of accepting some kind of disparity of landownership within the ceiling, including

accepting the idea that the poor could access land via the rental market? If it chooses the second option, how can it guarantee the rights of the tenants? How can it overcome the phenomenon of absentee landlordism? Are the large landlords of Nepal capable of transforming and modernizing the agriculture sector by increasing productivity?

It is probably very difficult to put the answers to those questions in the constitution. However, some of the existing policies adopted in the earlier attempts at land reform and in the Interim Constitution should be honored and kept in the new constitution, regardless of the answers of the above mentioned issues.

The new constitution should build on implementing the existing articles in the Interim Constitution, particularly those articles under the section on obligation of the State: *“to pursue a policy of providing social and economic security including land to the landless squatters, bonded laborers, tillers, Haruwa-Charuwa as well as the economically and socially backward classes”*.

Although the above-mentioned issues are clearly in accord with the objectives of land rights movement in Nepal; unfortunately the makers of the Interim Constitution have managed to prevent the target groups from using those articles in courts by stipulating Article 36 which states that the question upon the above mentioned articles cannot be raised in the court. Article 36 (1) states that *“No question shall be raised in any court as to whether or not the matters contained in this part have been implemented”*(Interim Constitution, 2007). This simply means that those above mentioned rights backed by the Interim Constitution are not real “rights”, but are simply declaration of intentions from political parties. As a result, land rights movement and target groups cannot use the constitution in the courts to force the government to implement them!



It will be a success if the land rights movement in Nepal manages to keep the above-mentioned rights in the new constitution while at the same time, not constraining them by stipulations like the ones made in the above-mentioned Article 36. It is also important that the new constitution emphasizes respecting the existing ceiling and authorizes a powerful committee to make sure they are implemented.

Regarding the issues of unregistered tenancy or poor farmers cultivating land belonging to absentee landlords, it might be useful to benefit from the Brazilian constitutional article that stipulates: “*The individual who, not being the owner or rural or urban property, holds as his own, for five years, without interruption or opposition, an area of land on the rural zone not exceeding 50 hectares and with his labor and that of his family makes the land productive and dwells thereon, shall acquire ownership of the land*”. (Brazil Constitution, 1993) Of course the size mentioned in the

Brazilian context should be adapted to the Nepali conditions where the property size is very small.

## Conclusion

In this article, I have tried to discuss the most burning issues regarding land and constitution in Nepal, namely the issue of private property, compensation, tenancy and land tenure issues. I believe the constitution should highlight the social function of private property rights. Also it is important for policy makers, in regard to the issue of compensation not to misuse the compensation as a way of making redistributive land reform impossible or financially costly and unsustainable. A lot of lessons could be learnt from some of the other developing countries’ constitutions in regards to the issue of compensation. It is also important that the new constitution of Nepal honour the progressive articles in the Interim Constitution.

## References

- Brazil Constitution (1993). Brazil, Constitution of Brazil (Adopted on 5 October, 1988). Retrieved from ICL: <http://www.servat.unibe.ch/icl/br00000.html>
- Constitution of South Africa. (1996). *Constitution of the Republic of South Africa* (Adopted in 4 December 1996).. Retrieved from South African Government Information: <http://www.info.gov.za/documents/constitution/1996/a108-96.pdf>
- Cousins, B. (2004). Grounding Democracy: The Politics of Land in Post-Apartheid South Africa’.
- Gomez-Saavedra, L. (2009). Nepal and Bolivia: a comparative analysis of land issues and constitutional approaches. *Land First*, March, Vol. 8
- Hamilton, L. (2006). Human Needs, Land Reform and the South African Constitution. *Politikon*, 33 (2), pp. 133-145.
- Interim Constitution, Nepal (2007). <http://www.worldstatesmen.org>. Retrieved from Nepal\_Interim\_Constitution2007: [http://www.worldstatesmen.org/Nepal\\_Interim\\_Constitution2007.pdf](http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf)
- Constitution of Korea. (1987). Constitution of Korea (Adopted in 17 July 1948). [http://www.servat.unibe.ch/icl/ks00000\\_.html](http://www.servat.unibe.ch/icl/ks00000_.html). Retrieved from ICL: [http://www.servat.unibe.ch/icl/ks00000\\_.html](http://www.servat.unibe.ch/icl/ks00000_.html)

## ANNEX

### Some Examples of Land and Agrarian Reform Articles in the Constitutions of Some of the Selected Countries

#### **1. South African Constitution 1996 (adopted in 4 December)**

(Source: <http://www.info.gov.za/documents/constitution/1996/a108-96.pdf>)

25. (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application –
  - (a) for a public purpose or in the public interest; and
  - (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including –
  - (a) the current use of the property;
  - (b) the history of the acquisition and use of the property;
  - (c) the market value of the property;
  - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
  - (e) the purpose of the expropriation.
- (4) For the purposes of this section -
  - (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
  - (b) property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
- (9) Parliament must enact the legislation referred to in subsection (6).

#### **2. Brazilian Constitution of 1996 (Adopted in 4th Dec 1996)**

(Source [http://www.servat.unibe.ch/icl/br00000\\_.html](http://www.servat.unibe.ch/icl/br00000_.html))

#### **Chapter III Agricultural and Land Policy and Agrarian Reform**

##### **Article 184 [Agrarian Reform]**

- (0) It is incumbent upon the Republic to expropriate for social interest, for purposes of agrarian reform, rural property which is not performing its social function, against prior and fair compensation in agrarian debt bonds with a clause providing for maintenance of real value and redeemable within a period of up to twenty years as from the second year of issue, and the use of which shall be defined in the law.
- (1) Useful and necessary improvements are compensated in cash.
- (3) A supplemental act establishes special summary adversary proceedings for expropriation action.
- (4) The budget each year determines the total volume of agrarian debt bonds, as well as the amount of funds for the agrarian reform program in the fiscal year.
- (5) Transactions of transfer of property expropriated for agrarian reform purposes are exempt from federal, state, and municipal taxes.

##### **Article 185 [Limits of Agrarian Reform]**

- (0) The following shall not be subject to expropriation for agrarian reform purposes:

- I. small and medium sized rural property, as defined in the law, provided its owner does not own other property;
- II. productive property.
- (1) The law ensures special treatment for productive property and establishes rules for the fulfilment of the requirements for its social function.

#### Article 186 [Social Function, Limits]

The social function is performed when rural property simultaneously meets, according to the criteria and standards prescribed in the law, the following requirements:

- I. rational and adequate use;
- II. adequate use of available natural resources and preservation of the environment;
- III. compliance with the provisions which regulate labor relations;
- IV. exploitation which favors the well-being of the owners and workers.

#### Article 187 [Policy]

The agricultural policy is planned and carried out pursuant to the law, with the actual participation of the production sector comprising producers and rural workers, as well as the marketing, storage, and transportation sectors, with special consideration for:

- I. credit and fiscal mechanisms;
- II. prices compatible with production cost and marketing guarantees;
- III. research and technology incentives;
- IV. technical assistance and rural extensions;
- V. agricultural insurance;
- VI. cooperativism;
- VII. rural electricity and irrigation systems;
- VIII. housing for rural workers.
- (1) Agricultural planning includes agroindustrial, stock raising, fishing, and forestry activities.
- (2) Agricultural policy action is rendered compatible with agrarian reform action.

#### Article 188 [Public Vacant Lands]

- (0) The destination given to public and vacant lands is to be compatible with the agricultural policy and the national agrarian reform plan.
- (1) The disposal or granting in any way of public lands

with an area of more than two thousand and five hundred hectares to an individual or legal entity, even through an intermediary, shall require the prior approval of Congress.

- (2) Disposals or grants of public lands for agrarian reform purposes are excluded from the provisions of the preceding paragraph.

#### Article 189 [Propriety Title]

- (0) The beneficiaries of distribution or rural land under the agrarian reform receive deeds of title or authorization of use which may not be transacted for a period of ten years.
- (1) The deed of title and authorization of use is granted to the man or the woman, or to both, irrespective of their marital status, pursuant to the terms and conditions set forth in the law.

#### Article 190 [Restrictions]

The law regulates and restricts the acquisition or lease of rural property by a foreign individual or legal entity, and determines the cases subject to authorization from Congress.

#### Article 191 [Usurpation]

- (0) The individual who, not being the owner or rural or urban property, holds as his own, for five years, without interruption or opposition, an area of land on the rural zone not exceeding fifty hectares and with his labor and that of his family makes the land productive and dwells thereon, shall acquire ownership of the land.
- (1) Public property shall not be acquired by usurpation.

### 3. Constitution of the Philippines (1987)

*(Source: <http://www.chanrobles.com/philsupremelaw1.html>)*

Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Section 5. The State shall recognize the right of farmers, farmworkers, and landowners, as well as cooperatives, and other independent farmers' organizations to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services.

Section 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

Section 7. The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

Section 8. The State shall provide incentives to landowners to invest the proceeds of the agrarian reform program to promote industrialization, employment creation, and privatization of public sector enterprises. Financial instruments used as payment for their lands shall be honored as equity in enterprises of their choice.

#### 4. South Korean Constitution of 1987

(Source ; [http://www.servat.unibe.ch/icl/ks00000\\_.html](http://www.servat.unibe.ch/icl/ks00000_.html))

##### Article 23 [Property, Public Welfare, Expropriation]

- (1) The right to property of all citizens is guaranteed. Its contents and limitations are determined by law.
- (2) The exercise of property rights shall conform to the public welfare.
- (3) Expropriation, use, or restriction of private property from public necessity and compensation therefore are governed by law. However, in such a case,

just compensation must be paid.

##### Article 120 [Natural Resources]

- (1) Licenses to exploit, develop, or utilize minerals and all other important underground resources, marine resources, water power, and natural powers available for economic use may be granted for a period of time under the conditions as prescribed by law.
- (2) The land and natural resources are protected by the State, and the State establishes a plan necessary for their balanced development and utilization.

##### Article 121 [Agriculture]

- (1) The State endeavors to realize the land-to-the-tillers principle with respect to agricultural land. Tenant farming is prohibited.
- (2) The leasing of agricultural land and the consignment management of agricultural land to increase agricultural productivity and to ensure the rational utilization of agricultural land or due to unavoidable circumstances, is recognized under the conditions as prescribed by law.

##### Article 122 [Land Laws]

The State may impose, as under the conditions prescribed by law, restrictions or obligations necessary for the efficient and balanced utilization, development, and preservation of the land of the nation that is the basis for the productive activities and daily lives of all citizens.

##### Article 123 [Farming and Fishing]

- (1) The State establishes and implements a plan to comprehensively develop and support the farm and fishing communities in order to protect and foster agriculture and fisheries.
- (2) The State has the duty to foster regional economies to ensure the balanced development of all regions.
- (3) In order to protect the interests of farmers and fishermen, the State endeavors to stabilize the prices of agricultural and fishery products by maintaining an equilibrium between the demand and supply of such products and improving their marketing and distribution systems.
- (4) The State fosters organizations founded on the spirit of self-help among farmers, fishermen, and businessmen engaged in small and medium industry and guarantees their independent activities and development.