



Land First

Occasional Journal of Land Rights

Volume 8, March 2009

Community Self Reliance Centre
(CSRC)



Editorial Team

Mr. Alex Linghorn

Mr. Jagat Basnet

Mr. Jagat Deuja

Ms. Chahana Chitrakar

Ms. Kalawati Rai

L

and First

Occasional Journal of Land Rights

Volume 8, March 2009

© Community Self Reliance Centre (CSRC)

Published

March 2009

Published by

Community Self Reliance Centre

Layout and Design

M Phuyal

Constitution, Commission and Cooperation

2009 will be a pivotal year for Nepal. The government is mandated to draft the new Constitution, determine a viable system of federalism, and reform the feudal systems that constrain society. Nothing epitomises Nepal's archaic feudalism more than the elite control over agricultural land.



The new Constitution will outline the fundamental laws and principles by which the country will be governed. In this context the principle of social justice and the rights of tillers to the land they till must be included. Constitutions are designed to protect the basic rights of all citizens to a dignified life and not to serve elite interests.

The government finally responded to sustained pressure from the land rights movement, in creating a new high-level Land Reform Commission to develop a scientific land reform model for Nepal. The newly formed Commission has stated its intentions to end feudal control over land and to consult with landless people to address their problems. Community-driven reform can no longer be dismissed as an academic, or development, 'buzzword' because it is coming directly from the landless people themselves and has proven to be critical for success in many other countries. The government and the communities they serve must cooperate to deliver a viable, equitable and sustainable model that will lay the foundations for a new era of peace, development and opportunity.

2009 will be a critical year for the land rights movement as they must continue to exert ever increasing pressure from a wider geographical area and at all levels in society. The landless tillers have shown great courage and vigour in sustaining their movement and they must go on with their struggle, as an end to their exploitation and suffering is in sight. The ever strengthening solidarity from NGOs, INGOs and bilateral organisations has helped build a civil society force that cannot be ignored. Nepal's selection as host for the ILC Global Conference in April 2009 sends a strong message that Nepal's land reform process is firmly in the spotlight.

CSRC Editorial Team

Inside

Comprehensive Land Reform: Debating the Current Situation - <i>Jagat Basnet</i>	1
Whose responsibility is it anyway? Donor apathy towards Land Reform in Nepal - <i>Sagar Raj Sharma PhD</i>	5
Land Reform & Conflict Sensitivity - <i>Michelle Parlevliet</i>	9
Interview with Haribol Gajurel	12
Commercial Pressures on Land - <i>Alex Lingham</i>	15
Empowering the Disempowered Tenant Farmers: A Study of the Impact of People-centred Advocacy for Land Tenancy Rights in Nepal - <i>Krishna Pathak, Nisha Tiwari Sharma, Laya Prasad Uprety</i>	19
People's Organisations in the Land Rights Movement - <i>Jagat Deuja</i>	22
Interview with Madiodio Niasse	26
Land Reform in Nepal - <i>Liz Alden Wily</i>	28
Women's Land Rights <i>A Significant Step towards Ending Violence against Women</i> - <i>Julia Chitrakar</i>	34
Interview with Tony Quizon	39
Nepal & Bolivia: A comparative analysis of land issues and constitutional approaches - <i>Luz Gomez-Saavedra</i>	43
Forming the high-level Scientific Land Reform Commission: <i>Opportunities and challenges</i> - <i>Ashraf Hussein</i>	47

Comprehensive Land Reform: Debating the Current Situation



■ Jagat Basnet *

Nepal has a long history of land reform debate, stretching back over 60 years. Throughout her past, Nepal's land has been commandeered as a tool for wielding and protecting power rather than as a means of production and agricultural livelihood. Since 1950, political parties, both in government and opposition, have consistently spoken of 'progressive', 'revolutionary' and 'pro-poor' land reform, acknowledging it as an economic issue but was never addressing it as such. In Nepal's first five year plan, beginning in 1956, land reform was the lowest priority for resource allocation, receiving less than 1% of the budget; it now receives around 0.5%. As land is a tool for the rulers and not the producers, this ensures policy makers view it as a commodity rather than a natural resource for production. Nepal's landowners, her ruling class and the agricultural policies they promulgate, form a close nexus, bound by exclusive power.

Critical issues and challenges for land reform

Land reform is a complex political issue. Despite strong demand from the people for land reform, past governments have consistently failed to transform their political commitments into actions. There

are many critical issues hindering land reform which must be tackled to ensure meaningful reform for the poor.

1. Spreading irrational fear of land reform

There is a misunderstanding among the landowning (and policy making) elites that land reform simply involves putting a ceiling cap on land, confiscating it and redistributing it to the landless and squatters. This message is promulgated to middle class landowners to build resistance towards land reform. In the Terai (fertile lowland plains), the elites have spread irrational fear, claiming that the people from the hills are using land reform to capture their land.

2. Lack of common framework for action

Major political parties have made commitments to "scientific land reform" through the Comprehensive Peace Agreement of November 2006 (which ended the armed conflict) and the Interim Constitution, 2007. But there does not appear to be consensus on the issue, nor a framework to put "scientific land reform" into practice. An agreed roadmap and framework will be essential for putting land reform rhetoric into practice.

* Mr. Basnet, Executive Director of Community Self-Reliance Centre, is a social activist and land rights campaigner in Nepal

3. Growing corporate interests

Broadly speaking, there are two fundamental perspectives on land reform. One is an equity-based socio-economic reform and the other is a neo-liberal market- and profit-oriented model. The actors advocating the former seek a balance of productivity, development, social justice and human rights, whereas the corporate sector mainly insists on the latter. Corporate donors such as the World Bank, IMF and the Asian Development Bank keenly promote market-led reforms, which treat land as a commodity, ignoring its fundamental role in society and in sustaining the livelihoods of the poor and excluded. In Nepal, corporate donors are pushing market-led land reform, which has proved time and again to serve the interests of multinational companies at the expense of poor farmers.

4. The Rule of law and property rights

The interpretation of property rights is a potentially divisive issue. Is it the right to keep what you have, to claim what you've been denied, or both? The World Bank, IMF other bilateral organization and the Asian Development Bank (ADB) set out to defend the property rights of existing landowners rather than pursuing the rights of exploited and marginalised workers. This does nothing but persist the status quo, which is most likely the aim. Property rights should not be used to defend the rights of absentee landlords to consolidate control over natural resources but to promote more equitable access to land, for long term sustainable production, peace and development.

Many people support the model of the World Bank, the IMF and the ADB as well as other bilateral organisations who view land as private property with property rights enshrined in basic human rights. This attitude further marginalises and excludes the rural poor, precluding any successful land reform process. Emerging

evidence suggests that land titling makes land more readily available to a larger circle of potential buyers; rather than facilitating pro-poor and equitable development, land titling projects may clear the way for large-scale accumulation of land that will gradually exclude the rural poor (Broegaard, 2009).

International financial Institutions and bilateral donors have poured millions into what is referred to as "Rule of Law Aid, Rule of Law Reform." It is estimated that up to \$500 million was provided by multilateral development Banks in the late 1990s and US\$9 million from all development agencies in the last decade (Manji 2006).

5. The focus is on tenure improvement rather than land redistribution

Priority has been given to land administration, few changes in ownership and few changes in policies projects such as computerising records providing piece of land. Without new progressive policies operating in tandem this cannot transform land administration and could serve to cement unequal land ownership and obstruct any future reforms.

6. No people's participation in policy formulation and implementation

Like in many other areas, the governments of the past, whether autocratic or democratic, never dared to involve the people concerned (the poor and landless) in formulating and implementing land reform policy. Policy formulation is seen as a technical and bureaucratic job, and not a process that demands the participation of those to whom it matters. Policies or laws made by bureaucrats and technocrats are doomed to fail because people do not believe in them nor participate in them. In the context of Nepal, centralised macro or bilateral negotiation on land reform will not work; for comprehensive land reform, the negotiation process must be at the micro

level (Village Development Committees, District Development Committees) and civil society must facilitate this process.

7. Exclusion of women from land ownership

Historically, women have been excluded from having access to and ownership of property and the means of production. This is clearly the case with land ownership. Only 10.8% of Nepali women own land and many of these are merely owners by name and do not hold the decision making power. In Nepal, land is the source of power and status and is tightly controlled by men. Women's access to, and ownership of, land is vital, not only for their empowerment, but also to counterbalance the socio-economic inequality that exists between men and women. However, no concrete efforts have yet been made towards empowering women; the women's rights movement in Nepal has still to be linked with land. New policies and laws must be made to address this issue as a top priority.

What Nepal wants?

Land reform is not only an issue of land distribution but also of economic, industrial and rural development in Nepal. It is the foundation of democracy and a key delivery mechanism for human rights and social justice. The profile of land issues is growing rapidly on the international stage but the focus of many aid agendas remains rooted in policy reform rather than genuine land reform. This is destroying the people's agenda for land reform and will smother it with an agenda in the name of property rights as human rights to protect the elites and entrench the status quo.

Market-led land reform is closely related to the neo-liberal economic programmes of international financial institutions which heralded the 'green revolutions'. These market-led revolutions promising high employment and productivity failed

socially, economically and environmentally; hindsight shows that elite based growth is unsustainable and does not provide opportunities to the majority poor. Country growth figures can be as high as 20%, but this is meaningless if it is concentrated in the hands of the few and not equally distributed between economic sectors and demographic groups. Market-led land reform clearly exacerbates the gap between the rich and the poor, both in the contexts of countries and people.

Nepal can learn from other countries' land reform models and experiences, using them to inform a Nepali model and not simply replicating them. Nepal is a diverse country and every Village Development Committee and District Development Committee needs to discuss its own village or district land reform framework and prepare its own model, rather than adhering to rigid, central or international prescriptions. 50 years of international experience tells us that centrally prescribed or market-led land reform will not benefit the majority and is therefore doomed to failure.

For the last 60 years, Nepalese landless and tenant farmers have struggled for a people-led land reform process which includes them in the decision making and implementation process. They will not tolerate a market-led or market-oriented model of land reform for Nepal. The World Bank, the ADB and others are sending consultants to countries such as Nepal to push their agenda for market-assisted land reform. What Nepal really needs is to listen to its own civil society whose livelihoods depend on the land and to learn from their ideas for people-led land reform.

In the name of land reform, the incumbent government or land commission can accept significant grants and credits from organisations such as the World Bank and the ADB but this will not help the poor and could obstruct any real land reform.

The 'land bank' concept, which the World Bank attempted to push onto Nepal, simply protects the private property rights of the rich by paying top market prices to landowners willing to sell and burdening the rural poor with crippling debt. This model is clearly not suitable for Nepal. Nepal must stand against the global commoditisation of land. Her strong civil society needs to advocate that cultivatable land should be controlled by those who farm on it and natural resources are a means of production not a commodity to be bought and sold by international speculators. This is not to say that subsistence farming is the way forward; subsistence farming does not reduce poverty, but land reform should provide enough land for surplus production to meet people's basic needs such as health and education.

Land rights are unequivocally linked to democracy, development, human rights and social justice, yet real land reform has been systematically ignored. There is a misconception that land reform is just for the landless and poor people; this view does not consider the wider implications for democracy, economic growth and nation building. International capitalism is closely linked with national feudalism and land reform operating under either system will never be authentic or effective. If governments are genuine in their desire for long term peace and development they must set the framework for land reform but give the power of implementation to the grassroots people to achieve their economic independence.

jagatb@csrcnepal.org

References:

- Ambreena Manji (2006) *The Politics of Land Reform in Africa (From Communal to Free Markets)* Zed Books, London/New York
- Broegaard, B. Rikkle (2009) *Land Titling and Tenure Security in the Context of Inequality*; DISS Brief Paper



Whose responsibility is it anyway?

Donor apathy towards Land Reform in Nepal



■ Sagar Raj Sharma PhD*

Foreign Aid in Nepal

Ever since the 1950s, when Nepal began receiving foreign aid, the international community has become increasingly involved in her development process. Donor financial assistance has been on the rise, to a level where at one point disbursements constituted 80 percent of the development budget (Sharma, 2002). Inevitably, such a high degree of aid dependency has serious political ramifications; the relationship between the dominant powers in this country and foreign assistance is a feature of domestic political debate. While government projects have largely failed to reduce poverty, foreign development aid has essentially become a metaphor for maintaining and strengthening national power structures. Despite all the scrutiny foreign aid receives from the national and international media, elite social classes continue to play a decisive role in determining both the form and distribution of aid, often ensuring that they are the main recipients and beneficiaries. As a result, foreign aid ‘development’ continues to satisfy the upper social classes

while at the same time increases the dependence of the lower classes. Despite the recent political changes, foreign aid continues to constitute a very large slice of the development budget (MOF, 2008). This excessive dependency on foreign assistance becomes clearer if one takes a closer look at some of the latest foreign aid figures. A combination of loans and grants financed almost 53 percent of all development expenditure in 2008-09, with the share of grants being consistently higher than that of loans. Despite this significant inflow of aid, the majority of people feel that aid channeled through government line ministries has not resulted in effective poverty reduction, and that much of this aid money has been misplaced. Even the seemingly hefty aid package for agriculture has failed to bring acceptable growth in agricultural production.

Land Tenure in Nepal

There have been a host of arguments for and against almost every attempt at land reform in Nepal, without yielding any significant results to date. Successive

* Dr. Sharma is a leading and widely published academic on land and social issues. He is currently head of the Department of Human and Natural Resources Studies Centre at Kathmandu University (HNRSC).

governments have utterly failed in solving this age-old problem; even now the government appears to be only half-hearted in its commitment to finally resolve this issue.

One major challenge for Nepal is the significant presence of substantial areas of fallow land, left unused because of the poor availability of year-round irrigation. The productivity of land is being severely restricted, with year-round irrigation available for only 20 percent of total cultivated land (Yadav, 2005). Furthermore, there exists an understandable fear among landlords that by renting out their land for sharecropping they may encourage the sharecroppers to claim the land as legal tenants. This state of confusion and uncertainty is a major hindrance to adequate investment in land that is required to increase productivity.

Yet another serious issue regarding the state of land is the condition of fragmentation and subdivision of holdings which has had an adverse effect on agricultural production. Yadav (2006) claims that between 1961 and 2001, the number of land owners has more than doubled, to 3.4 million, and the average holding size has decreased to a mere 0.8 hectares; turning Nepal into a nation of small and marginal farmers. He further argues that fragmentation has had a negative effect on agricultural growth, and suggests that the Land Bank policy put forward by the World Bank is a possible solution. The Land Bank policy may indeed have some positive implications, but it also carries the risk of introducing profound negative consequences, leaving the poor and landless tenants in an even more vulnerable position (Sharma, 2008). The issue of land rights and land reforms in Nepal is not simply an issue of economic development; it is equally concerned with securing livelihoods and maintaining dignity for poor and marginalised people. It is a vehicle to deliver freedom from exploitation and slavery, which has plagued

this country for centuries.

Foreign Aid and Land Reform in Nepal

The figures for foreign aid received by Nepal, particularly for Land Reforms in recent years, reveal that this issue isn't a priority for the donor community in Nepal. According to the Development Cooperation Report published by the Ministry of Finance (2006), from the total foreign aid received by Nepal in 2005, the Economic Services sector received the largest share, which amounted to approximately NPR 11,326 million, constituting almost 43 percent of total aid. Clearly, economic development has become, at least on paper, the priority area for donors as well as policy makers in Nepal. Table 1 (see below) takes a closer look at the details of these Economic Services, which also includes the subsector for Land Reforms & Survey. What is most surprising, and at the same time disheartening, is that there has been hardly any investment from the donors' side in this subsector, clearly reflecting their lack of interest, and perhaps ability, in solving this acute and sensitive issue. The plight and numbers of landless farmers continues to rise daily, weakening and degenerating the state of Nepal. Perhaps realising that the donor community have ignored this fact for too long, the Asian Development Bank has recently agreed to provide financial assistance to the tune of \$350,000 for the purpose of strengthening land administration services (ADB, 2007). Such assistance appears to be pro-government rather than pro-public and pro-status quo rather than pro-reform. The ADB claims that it wants to support the longer term goals of the government, yet these objectives are flawed and inherently feudal. In the meantime, by playing by the old rules there is a genuine danger that this project will simply result in reinforcing the existing land administration system which is highly biased towards land owners.

Table 1: Actual Aid Disbursements in the Subsectors of Economic Services (Million NRPs)

Economic Services	2005/06	2004/05	2003/04	2002/03	2001/02
Agriculture & Cooperatives	686.5	546.2	1,014.3	1,194.7	1,380.7
Civil Aviation		0	80.1	362.2	655.2
Commerce	34.3	17.2	59.0	122.1	232.4
Forestry & Soil Conservation	889.3	223.5	162.2	93.9	84.4
Hydropower & Alternative Energy	4,234.70	648.4	1,584.5	3,330.8	4,928.5
Industry	77.6	68.7	105.1	119.6	99.6
Information & Communications	494.5	272.8	57.1	332.0	0
Irrigation	174.3	784.4	1,478.4	2,106.3	2,398.7
Labour	139.9	192.0	146.1	84.7	51.9
Land Reform & Survey	0	0	0	0	0
Natural Resources Management	130.1	91.5	109.7	84.1	84.3
Roads & Transportation	1,385.30	1,356.3	1,721.5	2,644.7	1,876.4
Science & Technology		0	0.3	2.0	0
Tourism		44.3	129.9	195.0	236.8
Other Economic Programs	3,079.20	6,105.4	3,201.0	1,331.9	1,718.8
Total	11325.6	10350.7	9,849.2	12,004.0	13,747.7

Source: Sharma (2008b), p. 73

The burden of foreign aid and its complete failure to produce significant results, either in the overall development of the country or in poverty alleviation, is now a well established fact. What one needs to do is to try to analyse why this has happened. Simply blaming corrupt politicians and unethical bureaucrats is not good enough. Understanding the causes and implications of the chronic aid-dependency syndrome that has engulfed the minds of the Nepali people at all levels requires a deeper analysis; I have dealt with this extensively elsewhere (Sharma, 2008a). Foreign aid is, and has been, effective in raising growth levels in 'good' environments and ineffective in 'poor' environments (WB, 1998). This statement holds true whether the 'environment' is defined narrowly in terms of macroeconomic policy or more broadly in terms of a wide range of policies and institutions. What one could say in general, is that foreign aid has been ineffective because too much of it has been concentrated in 'poor' environments. The

government becomes so overwhelmed by foreign aided projects that the business of government becomes dominated by the need to satisfy donors, superseding the need to satisfy citizens. Nepal clearly falls into this category.

Conclusion

Land reform has not been a priority for the donor community in Nepal, with several reasons often cited for this lack of interest; they claim that it is a highly complex and increasingly politicised issue closely linked with tradition, society and class hierarchy. Most large donors justify their limitations by claiming that their mandate is to work solely with the government and consequently, in the case of land reform, focus on soft targets such as improving the existing land database system. This approach serves only to reinforce the highly landlord-biased existing land administration. The stark reality is that until, and unless, the state

delivers some genuine measures to protect rights, rampant poverty and destitution will continue in Nepal, and the agricultural sector will remain stunted. Farming cannot develop and prosper under a system where land is controlled by absentee landlords who have little time for, or interest in, farming.

The World Bank's initiative epitomises the donors' approach to land reform, which focuses exclusively on economic development. Land reform is also about evolving the existing power structure and socio-economic relations to ensure a better livelihood for the many thousands of poor peasants. Land reform is not limited to

simply handing over land from one tenure group to another. Perhaps the most serious implication of land reform is its power to grant freedom and release from the endless cycle of discrimination and exploitation. The state of Nepal and her people can never be strong and prosperous until, and unless, its poorest peasants can live without fear for their livelihoods, income, security, and above all, dignity. The donors must also review their priorities, and establish a genuine pro-people approach; otherwise, they will inevitably be accused of promoting self-serving agendas and failing the people of Nepal.

sagarkun@yahoo.com

References

- **ADB (2007).** *Nepal: Strengthening Land Administration Services*. ADB Technical Assistance Report, Project No. 40544, Asian Development Bank, Kathmandu, Nepal
- **Ministry of Finance (2006).** *Development Cooperation Report 2005*. Foreign Aid Cooperation Division, Ministry of Finance, Government of Nepal, Kathmandu, Nepal
- **Ministry of Finance (2008).** *Budget Speech of the Fiscal Year 2008-09*. Ministry of Finance, Government of Nepal, Kathmandu, Nepal
- **Sharma, S. R. (2002).** *The Role of ODA and FDI in the Development of Nepal*. In Fukuoka University Journal, Vol. 32, No. 2, Fukuoka University Press, Japan
- **Sharma, S. R. (2008a).** *Role of Foreign Aid in Transformation*. In (Pyakuryal, KN; Upreti, BR; Sharma, SR. Eds) *Nepal: Transition to Transformation*. Human and Natural Resources Studies Centre (HNRSC), Kathmandu University and South Asia Regional Coordination Office of NCCR North-South. Pp. 49-75
- **Sharma, S. R. (2008b).** *The Price of Misplaced Priorities: Foreign Aid and Land Reform in Nepal*. In (Upreti, BR; Sharma, SR; Basnet, J. Eds) *Land Politics and Conflict in Nepal: Realities and Potentials for Agrarian Transformation*. Kathmandu: Community Self Reliance Centre, Human and Natural Resources Studies Centre, Kathmandu University and South Asia Regional Coordination Office of NCCR North-South. Pp. 61-84
- **The World Bank (1998).** *Assessing Aid: What works, What Doesn't, and Why*. In World Bank Policy Research Report (Washington DC: World Bank)
- **Yadav, R. P. (2005).** *Land Tenure Situation in Nepal*. In Policy Outlook Series No. 7, Winrock International, Kathmandu, Nepal
- **Yadav, R. P. (2006).** *Where is the Land to Distribute?* In madhesi.wordpress.com, accessed on October 15, 2007



Land Reform & Conflict Sensitivity

A presentation by Michelle Parlevliet,
DanidaHUGOU

DanidaHUGOU Head Office,
Lazimpat, 13 February 2009

This presentation highlights the relationships and linkages between land reform and its potential for conflict.

Conflict sensitivity and conflict transformation

One of the first and foremost limitations relating to conflict sensitivity is the principle ‘do no harm’. It is important not to adopt this exclusively conflict sensitive approach, for fear of rocking the boat and inviting criticism, as this risks maintaining the status quo. A balance is required.

Land reform is an agenda for social change, challenging the status quo and uprooting power dynamics. Highlighting the issues at stake and determining the degree of conflict intensification will determine whether it is necessary to advance land reform as a public issue, to be included in the public agenda.

General context

Land is a driver of conflict in Nepal. At the national level, political leaders have been unable or unwilling to advance land reform agendas, failing the Nepali people and creating unrest. At the local level, conflicts linked to land have included evictions, the tension between community forest user groups and landless people, and the flawed process for registering tenancy

rights.

It is significant that there has never been any consistency between the political parties regarding land reform. There are no agreed definitions on what land reform actually is and what it means. This has been aggravated by the absence of reliable national baseline data on land ownership and tenancy. The number of properties seized during the conflict and subsequently returned is also unknown.

It is vital to understand the complexity of the land situation in Nepal; the various stakeholders, the widely varying conditions and the overlapping layers of development. A binary interpretation of land will simply not work.

Complexity of the land situation

Land ownership in Nepal is complex; it is not a simple case of a few large landowners and many small landowners or landless people.

Past experiences play a crucial role. Given the historical experiences of land rights activism, there is a trend among land activists to have little confidence in, and a general mistrust of, the state.

Many Madheshi politicians and activists have a negative perception of land reform, seeing it as a means of redistributing their lands in the Terai to people from the hills, with low caste Madheshis losing out.

Indigenous peoples in Nepal also have their own historical experiences of dispossession from their traditional forestry lands.

It is important to first clarify the purpose and priorities of land reform in Nepal: Economic growth; environmental protection; social justice?

Rational for supporting land reform in Nepal

From a donor's perspective, why and how should we support land reform in Nepal? Historically, land reform has been limited in its scope and impact, with the main beneficiaries being the state and landlords. Given the context of the historical coalition between land owners and the state, there will not be substantive land reform in Nepal without significant and sustained external pressure. It is clear why we should support this process; it is a human rights issue and a social justice issue as well as a matter for economic development and food security.

How can we as the international community support this process? Beyond the allocation of funds, we can offer technical assistance with strategic, analytic, alliance building, and advocacy input.

The state and government have a fundamental responsibility that cannot be shied away from. Land reform can be addressed in the context of the peace process, non-discrimination, social justice and poverty reduction.

Given these multiple options, where should we focus? The high-level Land Reform Commission constitutes an opportunity for change and influence. Some have questioned the independence of the Commission; its members are from

political parties, they have to respond to their particular constituencies and do not necessarily have the knowledge required. The Terms of Reference (ToR) has yet to be developed, raising doubts about the Commission's credibility. Additionally, if the Commission is limited to an advisory role, how will it disseminate and be held accountable for its recommendations? Serious questions could be raised regarding the Commission's intended interaction with a wide range of stakeholders. There is a real fear that this commission will replicate the redundant role played by the 1995 Land Reform Commission, nevertheless, it is clear that there have been substantial changes in Nepal since 1995 which gives hope that this latest commission will adopt a new and innovative approach.

Some lessons can be learned from the TRC and Disappearances Commissions. These had heavily flawed ToRs, little transparency, questionable independence and credibility, and an unsound consultation process. It will be necessary to engage with the government prior to the finalisation of the Land Reform Commission to avoid such flaws; any engagement should not precipitate defensiveness on the part of government, which could compromise receptiveness and even lead to the government blaming civil society and the international community for delays to the reform programme.

It will be a difficult balance to achieve and it would be prudent to pursue an *acceptable* commission rather than a *perfect* one.

What then, would be the focus of support for the Land Reform Commission? Several ideas are advanced:

- Broaden the knowledge base.
- Identify and explore a range of options, including international experiences.
- Help the members of the Commission to understand the

possible trade offs in forming a land reform programme.

- Establish a mechanism for interaction and dialogue between the Land Reform Commission and the wider public, including civil society and landless people.

The state and the international community can work together to facilitate the process of land reform by establishing conduits, between each other and in a wider context between the commission and officials at local and national level. A focus on joint problem solving will encourage a positive relationship.

Moving Forward

- In terms of strategy, it is interesting to begin by focusing on smaller or less divisive issues; it builds up confidence and creates momentum for future dialogue and negotiation in order to address the major issues.
 - Develop a better information base (number of landless people, land distribution trends, available land, etc.)
 - Improve land administration and management, given that the current system is perceived as problematic. Carefully consider the context and possible risks of digitisation and the national cadastre. Information and administration are a means to an end and not an end in itself. Digitisation of land records and a national cadastre may reinforce, consolidate and enshrine current injustices and reduce the interaction between officials and landless people.
 - Deal with encroachment issues. This may be less divisive than dealing with
- the return of *seized* land. However there is a risk that when donors fund (re)settlement programmes they could encourage migration to those areas by people in search of land.
 - Promote the dissemination of case studies and piloting experiences from the perspective of advocacy on good practices and in view of policy development.
 - Address the national legal framework.
 - Develop land reform in the context of indigenous rights as set out in Nepal's binding commitment to the International Labour Organisation Convention 169. Be aware that there may be a conflict of interest between the restoration of rights for indigenous people and community forest user groups.
 - Establish a clear link between state restructuring and land reform.
 - Recognise the limitations inherent in the provision of land to provide a sustainable standard of living, especially in the context of population growth and urbanisation. Within two generations there will not be enough arable productive land.
 - Look beyond agricultural land and consider other land such as *Guthi*, but beware that this may cause trouble with India.
 - Realise that the information and administration capacity lies at the local level while the guiding principles should be set at national level.
 - Finally, successful land reform must be holistic and not a piecemeal approach.



Interview with Haribol Gajurel

*Chair of high-level Land Reform
Commission.*



The Commission was inaugurated on 27th March 2009 and consists of nine members. Headed by the Maoist central member, Haribol Gajurel, each coalition party has one representative, in addition to an agriculture specialist and a representative from the National Land Rights Forum (NLRF). The NLRF staged a 13-day protest in Kathmandu demanding the formation of this Commission to address the problems of landless people. The Commission is tasked with investigating and proposing a scientific land reform process for Nepal.

Q: The new high-level Land Reform Commission has a great opportunity. Never before has the readiness to reform been so strong and never before has a government been so willing to create the institutional conditions necessary for reform to take place. There is now a national consensus in post-conflict Nepal that we must sever ties with our feudal past and enter into a new era of peace and economic opportunity. Are you hopeful that this commission can help to achieve real land reform and fulfill the mandate of the people?

A: Yes, I am very hopeful. Feudal control over productivity must be terminated in order to secure justice for farmers. Farmers will not work with enthusiasm until, and unless, they receive justice. Without enthusiasm in their work there will be no improvement in productivity. So, there is

no doubt in my mind that in order to change the current feudal socio-economic structure of society, land rights deprived victims should be provided with appropriate compensation. From an economic perspective, the major issue right now is how to increase productivity and end feudal control. In order to solve these problems, the support and enthusiasm of farmers will be essential. Compensation will help to make farmers aware and generate their enthusiasm. Following this, it will be critical to institute a proper system and process to provide justice to those who have had to endure injustice. The problems relating to dual ownership and *guthi* land will gradually be resolved.

Q: The previous high-level Land Reform Commission of 1995, also known as the Badal Commission, failed to deliver significant land reform; its recommendations were either not

enforced or served to worsen the plight of tenants and landless farmers. For instance the commission recommended lowering land ceilings; this was not implemented for 6 years and in the event at much higher ceiling levels than those recommended. The 50% land entitlement to registered tenants served to increase tenure insecurity and disenfranchise the majority of tenants who were unregistered. How will you seek to avoid the mistakes of the past?

A: Among all the land reform commissions established in the past, comparatively, the Badal Commission has been the most systematic. However, a change in the government immediately after the submission of the commission's report made it impossible to implement the recommendations. As far as other commissions are concerned they differ according to the party they belonged to. For example, the Nepali Congress, because they represent the landowners, will not work for land reform.

The circumstances of the past and present differ greatly. So, I think the report that will be prepared by our commission will not create such problems. Additionally, our commission will not put forward suggestions and objectives that cannot be implemented.

Q: Experiences from land reform programmes elsewhere, from Africa to Latin America, including many post-conflict contexts, have shown that a devolved, community-based approach to land reform is the most successful. This seeks to empower local communities to act as planners, implementers and enforcers, operating under a nationally prescribed framework. Given that Nepal already has an established network of local governance in the Village Development Committees, is this an approach you will seek to explore?

A: The term “devolved, community-based approach to land reform” is a popular phrase being used by NGOs. They strongly believe that political parties are incapable of doing anything, which is not true. It is political parties that can, and should, work for the benefit of the poor. As far as empowering the local communities and involving the farmers is concerned, we are going to many villages during a 3 month knowledge gathering process where we will be collecting their views, listening to their problems and taking suggestions from them.

Q: The membership of the Commission is largely political, with the potential for party politics obstructing the Commission's work. An inclusive, participatory approach that interacts with a wide range of stakeholders will go some way to giving the Commission credible independence. Will you seek to pursue this approach?

A: Our commission is not suffering from party politics. We have reached a consensus on working in a united way. Discussions and meetings held to date reinforce this. We will move forward only after we have had sustained dialogue with political parties and reached a mutual understanding. Land reform is a subject of concern for everybody.

Q: Developing the detailed Terms of Reference (ToR) for the Commission is a critical step as this will set out the roadmap for what is to be achieved, how it will be achieved, when it will be achieved, who will take part and what their roles, responsibilities and accountabilities will be. When will the Commission's ToR be ready?

A: The Commission needs to submit its Terms of Reference within 6 months of its date of establishment. The Commission was formally inaugurated on 27th March, although the official date is within 6 months of that, the time that we plan to spend in

the villages may be delayed because of the rainy season. Otherwise, there are no problems regarding us submitting the ToR on time.

Q: What role can civil society play in supporting the Commission? There is a huge knowledge base in the form of People's Organisations, CSOs, NGOs, international donors, academics and the general public. What mechanisms do you foresee implementing to facilitate dialogue and interaction between the Commission and these

groups?

A: Land reform is a subject matter that should concern everybody. In order to send a positive message of land reform the media needs to play a bigger role. The media seems biased right now against land reform and the Commission; it is necessary to bring about changes to their viewpoint. If the land rights deprived victims are provided with the necessary compensation the landowners will also be able to feel secure about their property which will create a situation of peace and harmony.



Commercial Pressures on Land



■ Alex Lingham

CSRC

The threat to land tenure security for the poor has never been so severe. In addition to the established dangers of population growth, climate change and exploitative governance systems there are new powerful commercial pressures for landless and land-poor farmers to contend with.

Land is rapidly transforming into a global commodity, traded between international banks, multinational companies, governments and speculators, creating precarious instability in the price of land and staple foods and posing a serious threat to land access and tenure security for the rural poor.

Catalysed by soaring food prices in 2008 and compounded by worldwide financial uncertainty, import reliant countries have begun scrambling to secure food sources for their domestic markets, in what has been called 'the last great global land grab'. Concurrent with this is the rampant growth in subsidised biofuel production, to meet ambitious renewable fuel targets in the West, and the inception of carbon trading, which places a commercial value on standing forests and rangelands. Extractive mining and 'ecotourism' add to the perilous predicament for vulnerable landless and land-poor farmers.

Currently one quarter of the World's productive assets are controlled by a mere 200 corporations and recent commercial trends point to further privatisation and consolidation of natural resources. The revenues of many transnational companies now far exceed those of the countries in which they operate. Such a concentration of lightly regulated power in international profit-seeking hands is ominous for small producers and even more so for the most marginalised members of developing societies, relying on agriculture for their basic livelihood needs.

It is estimated that between now and 2050 food production will need to double in order to satisfy the growing demands of the World's population. Transnational companies and import dependent governments have begun to focus on developing countries to supply their agricultural needs, seeking to strike deals that will bring vast tracts of land under their exclusive control. One high profile case which highlights the land grab phenomenon is the now infamous deal between Daewoo Logistics of South Korea and the Madagascan government, to lease 1.3 million hectares of land on which to grow food for the South Korean domestic market. Opponents of the deal feared that

too many farmers would lose control over their land and Madagascans took to the streets to demonstrate their disapproval. The deal appears to have collapsed as the country has plunged into crisis. Cambodia is currently in discussions with several Asian and Middle Eastern governments to provide millions of hectares in land concessions for up to \$3 billion in 'agricultural investment'.

While genuine community based agricultural investment is to be welcomed, the neocolonial pacts favoured by direct foreign investment pose a serious threat to tenure security and the land poor, many of whom could be forced out of food production and left to join the ranks of the rural hungry or city slum dwellers.

The significant profits that are available to private companies and national governments in the shape of land deals has meant that existing legislation and the rights of indigenous and landless people are often obviated for short term personal gain. The complexity of market mechanisms and the nexus of elite corruption provide fertile ground for unscrupulous governments and power brokers.

The scramble for land often occurs in countries with weak legal frameworks where farmers are not protected by secure land tenure systems. This is resulting in the fertile land of the World's poorest countries becoming privatised and concentrated, creating a direct threat to food sovereignty, local production and rural livelihoods.

The increase in biofuel production is certain to intensify competition for land between indigenous forest users, land-poor farmers, agribusinesses and financial speculators. The direct competition between biofuels and food crops is set to lead to higher food prices and less land for subsistence farming, factors which will create an uncertain future for the poor and hungry. Although biofuel production could

offer stable employment opportunities, the exploitation that occurs on many plantations around the world is not encouraging. As biofuel production expands it will spread onto less productive, arid and semi-arid land, posing a direct threat to fragile pastoral and agro-pastoral communities.

Many NGOs have called for a global moratorium on the production of biofuel in order to explore its social, environmental and human rights impact and to devise an appropriate regulatory framework. Some scientists even question the benefit of biofuels, which are often planted on deforested land and fed with ammonia releasing nitrogen fertilizers. It is estimated that it takes approximately 200 kg of maize to fill the petrol tank of a car with biofuels, enough to satisfy a person's annual food requirements. It is therefore anticipated that to avoid a sustained food crisis the next generation of biofuels will need to derive from non-food plants or other materials such as organic waste.

Foreign speculators and nation states are acquiring carbon rich land, hoping to turn a profit by providing environmental and carbon sequestration services and trading on the carbon offset market. In many cases, standing forests used for carbon sequestration schemes historically belonged to indigenous people, who were legally outmaneuvered by corrupt states and evicted or coerced into compulsory purchase schemes. The growth of timber wood lots planted by those keen for carbon cash have also had a significant impact on land tenure security and the environment.

Conservation rooted in market-based mechanisms will predictably lead to increased corporate governance over biodiversity and further erode the rights of poor people who rely on the land for their basic livelihood needs. Studies reveal that disempowered communities who had previously followed sustainable models for land management become more likely to act selfishly, accelerating the degeneration

of both community and environment.

The trend to adapt biodiversity and conservation to fit economics with the hope that market forces will drive conservation is a concept that is already conflicting with the customary rights of indigenous cultures and those who rely on these natural resources for their livelihoods. Questions must be asked: Should something as invaluable as the earth's natural resources and biodiversity be converted into a commodity to be bought and sold by private companies confined to shareholder interest? Is this really equitable, ethical or even sustainable?

The rise of ecotourism in many developing countries has led to privatisation and encroachment upon common resources, to the detriment of indigenous groups and those with insecure land tenure. There are very few regulations or guidelines and case studies show that in their current form, market-based initiatives erode community governance with the rewards concentrated in the hands of the powerful few. Many governments have acquired and leased land to corporations and entrepreneurs for the purpose of building resorts, lodges and hotel complexes situated on the periphery of protected areas. Aside from the inevitable displacement and encroachment, local communities are often expected to subsidise the increased demand on local services created by large commercial enterprises and the influx of ecotourists.

The scale and velocity of these new commercial pressures on land will require civil society and other stakeholders to respond in equal measure, joining forces to strengthen the tenure security of vulnerable land users whose access to land is severely threatened. The International Land Coalition has taken the initiative in launching its collaborative research project on 'Commercial Pressures on Land'. This project aims to debate and document the

trends, impacts and opportunities of commercial pressures on the tenure security of poor land users, with particular focus on economic, legal, political and historical aspects. The study will culminate in a global report to be issued in late 2009, providing hard evidence with which to inform and influence global, regional and national policy makers.

It is clear that potential foreign investment should be carefully analysed to assess the full impact on the community as compared with the investors' financial interests, prior to any deals being struck. Sound investment should be accompanied by skills and knowledge sharing with local communities to establish foundations for long-term cooperation. The exploitation of natural resources for the sole purpose of shareholder gain is unsustainable.

The new REDD (Reduced Emissions from Deforestation and Degradation) scheme which will offer developing countries financial incentives for preserving biomass stocks in standing forests, is an opportunity for states to define forest tenure and create community based benefit sharing mechanisms. Similarly sustainable tourism can be used to reinforce community governance over biodiversity as a conservation strategy.

The billions of dollars of potential investment from oil rich nations is enormously tempting for impoverished states at a time when the worldwide financial crisis threatens aid from the West and the demand for exports is shrinking. Governments must not be lured into exclusive market mechanisms that generate ever greater inequalities and create a profoundly negative effect upon community governance, food sovereignty and peace building. The primary responsibility of all governments is to protect the basic human rights of their citizens, paying special attention to the poorest and most vulnerable.

alex@linghorn.co.uk

References

- Global Forest Coalition, *Life as Commerce: The impact of Market-Based Conservation on Indigenous Peoples, Local Communities and Women* (2008)
- International Food Policy Research Institute, *Food and Financial Crises: Implications for Agriculture and the Poor* (2008)
- International Institute for Environment and Development, *Fuelling Exclusion? The Biofuels Boom and Poor People's Access to Land* (2008)
- International Land Coalition, *Land and Vulnerable People in a World of Change* (2008)
- International Land Coalition, *Secure Access to Land for Food Security*, UNDP-OGC, 24-25 Nov 2008
- Oxfam International, *Another Inconvenient Truth: How Biofuel Policies are Deepening Poverty and Accelerating Climate Change* (2008)
- Rights and Resources Initiative, *Seeing People Through Trees: Scaling Up Efforts to Advance Rights and Address Poverty, Conflict and Climate Change* (2008)



Empowering the Disempowered Tenant Farmers:

A Study of the Impact of People-centred Advocacy for Land Tenancy Rights in Nepal

■ Krishna Pathak
■ Nisha Tiwari Sharma
■ Laya Prasad Uprety

Nepal's land rights movement has gained land entitlement for 14,423 tenant families, each receiving 50 percent of the land they tilled as tenancy rights.

CSRC commissioned this study, with the support of independent evaluators, to produce empirical evidence on the impact that receiving land has had on the lives of tenant farmers; valuable information for both policy makers and civil society. The study documents the learning and good practices established by the land rights movement at both community and national levels, recommending appropriate strategies for land reform in Nepal and improvements to the ongoing land rights movement.

The study adopts a quantitative and qualitative approach to assess the land rights movement's effect and impact. Data was collected during extensive field research through case studies, key informant interviews, focus group discussions, participant observation, and informal discussion. Secondary data was acquired through information in CSRC's resource library including program documents, periodic reports and publications, baseline studies and donor project documents.

Research was conducted in 9 districts,

covering a total of 40 Village Development Committees (16.4 % of the total) comprising 1,335 households. The sample was carefully selected to represent various ecological and development zones.

The study has been published in a 160 page book and is available from CSRC's resource centres. The following excerpt details the main conclusions and recommendations of the study.

Conclusions

The Impact of People-centred Advocacy for Land Tenancy Rights

- (1) Land entitlement to the tillers allows them to choose which crops they prefer to grow on their land and increases the cropping intensity to derive higher household income—a function of the sense of ownership over the piece of land and emancipation from the bondage of landlords, brought about by the land rights advocacy campaign.
- (2) Land entitlement, even on a small-scale, gives small holders the potential to increase productivity by intensifying their labour (self-employment) and use of inputs; it contributes to a reduction in poverty

- by improving household food security.
- (3) Entitlement to a piece of tilled land confirmed by a certificate of ownership is the source of the greatest happiness among the historically oppressed and exploited tenant farmers, in a feudal society where land is the source of all social, economic and political status.
 - (4) Entitlement to a piece of land has the potential to open up a host of opportunities for poor tenant farmers to explore additional economic development options and diversify their household income to help break the cycle of poverty.
 - (5) Land entitlement alone may not work effectively to reduce the poverty of poor tenant farmers. Ownership of land has to be supported by an integrated package of institutional credit, agricultural inputs, and training support for the modernisation of farming systems, enabling them to earn higher incomes.
 - (6) Land entitlement has the potential to free poor tenant farmers from their dependency on landlords, particularly in the regime of informal credit, where tenants were charged exploitative interest rates (often as high as 60% per annum).
 - (7) Land entitlement for tenant farmers and the improvement of their livelihood system form a positive correlation (i.e. land ownership helps improve the overall well-being of the household).
 - (8) People-centered advocacy has the potential to empower women by providing access to, and control over, land in a predominantly patriarchal society, albeit on a limited scale.
 - (9) People-centered advocacy for land tenancy rights, if scrupulously planned and launched by committed leaders and rights activists, can significantly contribute to:
 - changing the established power relations of landlords and tenants;
 - empowering tenants through building indigenous organisations and leadership potential;
 - empowering tenants by raising awareness of their unique potential to shape their lives and environment;
 - developing a sense of power within historically marginalised tenant families by raising their social status and enhancing their dignity and self-confidence;
 - enhancing tenants' capabilities to contribute to decision-making processes from micro to macro levels and influence policy making.

Recommendations

Based on the findings of the study the following recommendations have been made:

Policy-level Recommendations

- (1) Given that land entitlement has the potential to socially, economically, culturally and politically empower the historically disempowered tenant farmers, the government must make a concerted institutional effort to translate scientific land reform policy from a slogan in the Comprehensive Peace Accord, Interim Constitution and Interim Three-year Plan into reality. Land reform must be an integrated package focusing on the distribution of land to poor farmers accompanied by a support mechanism of institutional credit, agricultural inputs and capacity building of farmers for the modernisation of agriculture.
- (2) The fact that people-centred advocacy relies on an inclusive and democratic value system and tenant farmers already have a strong grassroots

organisation with committed leadership, the government must make a sincere institutional effort to include representatives of tenant farmers when framing and implementing land and agrarian reform policies and strategies. Any institutional effort that pursues a non-participatory, exclusive path, as in the past, will once again be a fiasco and doomed to failure.

Implementation-level Recommendations for Stakeholders

- (1) CSRC and its partners realise that the tenant farmers' organisation, the NLRF, needs to be further strengthened in order to create adequate pressure on the government and political parties to advance towards genuine land and agrarian reform. Additional efforts must be made immediately in this regard.
- (2) Given the fact that the review and reflection processes of the advocacy campaigns are yet to be systematically institutionalised within the organisation of tenant farmers, CSRC and the NLRF have to take the lead in streamlining the advocacy campaign and sustaining its long term impact.
- (3) Once tenant farmers receive land through tenancy rights, CSRC and its partner organisations should make a concerted institutional effort to link the farmers to different line agencies for their services (i.e. inputs from agriculture development offices, district livestock development offices, district irrigation offices, etc) and expertise and local governments (VDCs/DDCs) for their potential support in the initiatives of local agricultural development, particularly for the commercialisation of agriculture. This has been recommended because people-centered advocacy underscores the importance of collaboration between multiple stakeholders.
- (4) Given that proportion of tenanted land registered hitherto in the names of women is insignificant, CSRC and its partners should develop a concrete institutional strategy for the advocacy campaign to increase this proportion by raising awareness on gender issues among the male rights activists and the male tenant farmers.
- (5) The fact that Nepal's land governance is centralised, lacks adequate transparency and accountability, and is unsystematic in its operation, means that many problems emanate vis-à-vis the delivery of the quality of their services. More specifically, the delivery of services by the district level land reform and revenue offices has been poor and inefficient. Hence, government should immediately take corrective measures to improve land governance, including land administration and the land information system, to deliver quality services to people. In this regard, civil society organisations can work to build the capacity of the concerned agencies and their officials.
- (6) The government needs to design programs for improving land and agrarian reform in collaboration with community and local civil society organisations. Special initiatives for land consolidation, promotion of agro-based cooperatives owned and managed by communities, and increasing agricultural production and productivity through integrated interventions with other government agencies (such as irrigation, livestock, small and cottage industries, market promotion, etc) should be highlighted. NGOs such as CSRC and people's organisations such as the NLRF can effectively advocate in these areas and offer any necessary assistance to the government agencies. In this respect NGOs can play a coordinating and facilitating role.

People's Organisations in the Land Rights Movement



■ Jagat Deuja

CSRC

Social Movements

Despite the tremendous diversity in language, religion, ethnicity and culture within Nepali society, the system of governance remains stubbornly unitary and centralised; in other words, a total contradiction to the nation it represents. Successive governments persist with this pervasive tendency to seek centralised solutions to every problem.

Nepali society has been sub-divided into various arbitrary groups, aligned by class, caste and gender, with the powerful elite using this to perpetuate various forms of exploitation and discrimination. This socio-economic structure does not favour the poor and creates a cycle of dependency leading to unjust and discriminatory practices which violate their basic human rights. These persistent and extreme violations have catalysed the poor into gradually organising and leading social movements to claim their rights.

The process of collective intervention is based on a close scrutiny of the context and is aimed at claiming and realising social, economic, cultural, civil and political rights. People's movements may be launched as an immediate reaction to address a particular injustice or as a long term

response to effect underlying social change. For example, Nepal's factory workers' movement was instigated to seek an immediate improvement to workers' wages whereas the land rights movement is a long term commitment by victims, women, and indigenous people in their struggle for inclusion, social justice and dignity within society.

Social movements aim to change discriminatory and exploitative power relations through a fair reallocation of resources and equitable service delivery. Social movements share a number of fundamentals: the issue and its positioning; the road map; desired change and alternative options; strategic objectives; people's organisations and their mobilisation; public opinion building; influence in political decision-making; critical engagement with relevant actors; and building partnerships and alliances.

People's organisations are the backbone of any social movement. Change is not something to be imposed upon people but rather it is a process of struggle by the victims themselves to change their present situation. As such there is an urgent need to promote intensive discourse with individuals, families and people's organisations in order to make them aware

of their present plight and encourage them to unite to change their lives for the better. Awareness and power are both sides of the same coin. Through social awareness comes social power. Through social power comes social change.

The present Situation of the Land Rights Movement in Nepal

Over the last five years, several NGOs have begun working for the land rights movement in coordination and collaboration with CSRC. The movement is led by the National Land Rights Forum (NLRF), which is an organisation of tillers and landless farmers. The NLRF is organised at local, district and national levels, allowing the movement to grow and intensify at these various levels, with increasing numbers of land rights deprived people coming forward to make their voices heard. The process of organising land rights deprived people and their supporters has been gradually expanding and maturing, deepening and widening its understanding on ownership, access to, and control over, land by poor tillers, the problems associated with land reform and the alternative options. The agenda and process of the movement are factors that are constantly being refined.

Organising for Land Rights

Building a democratic and vibrant organisation at community, district and national levels is instrumental for the success of the land rights movement. NGOs can facilitate but cannot lead the movement. The political parties can help in resolving the problems but cannot replace the role of people's organisations. People's organisations do not just raise the call for land reform but can force key actors to implement land reform policies and laws effectively. Even after land reform, people's organisations have the scope to be an active liberated people's organisation. In this respect the NLRF has become an effective

and vibrant people's organisation within the land rights movement.

Organisation of the weak: an exercise in power transformation

Land rights deprived people have emerged as a genuine social force through the NLRF, which has gained recognition, respect and acceptance from political parties and the government as the representative body for all tenants and landless farmers. In 2008, the NLRF chairperson, Mr. Baldev Ram, was nominated to sit on the high-level Land Reform Commission; the NLRF vice-chairperson Ms. Shanta Chaudhary was voted into the Constituent Assembly and is now the chairperson for the parliamentary committee on natural resources management. A further four land rights leaders have also been voted to serve as members of the Constituent Assembly.

Land rights deprived people's access and representation has further extended into areas such as community forestry and school management. The establishment of poor tillers as a credible and redoubtable force has contributed significantly to the noticeable decrease in forceful eviction by the state and landlords. In the past there was little solidarity and poor tenants had little option but to tolerate the discrimination and injustice. Now the people's organisations have a strong voice, giving strength to all tenants and landless farmers; there is a real sense that the powerless have become empowered.

All tillers, throughout the country, share the same goal and are moving together towards the same destination. They are following the course of constructive dialogue and refuse to surrender. Strong people's organisations will not surrender until they receive equitable access to the natural resources upon which their livelihoods depend; access to fisheries, forestry, public land, VDC budgets, fair wages and equal participation and inclusion

in decision making. The land rights movement has significantly enhanced the sense of power shared by the poor, Dalits and other excluded groups; building strong people's organisations has been instrumental in developing the identity and dignity of the weakest sections of the community.

Nearly every key political party has now made a public commitment to pursue land reform. Land reform is provided for in the Comprehensive Peace Accord 2006, the Interim Constitution 2007 and the Common Minimum Programme set by the coalition government. A high-level Land Reform Commission has been set up by the government and includes a representative from the land rights movement.

Until now, national and international development policies were only concerned with increasing productivity; now they are seen as fundamental to livelihood security, identify and sustainable peace.

The land rights movement facilitates the process that transfers land ownership to those who till the land. Between 1994 and 2008, 14,423 families received a total of 3,303 hectares (5,751 bigha) of land. Among these beneficiaries, 25 percent are Dalits and six percent are women. This has contributed significantly to improving their livelihoods and participation in the development process while increasing production and food security.

The generation, dissemination and use of land rights knowledge and resources have contributed greatly to enhancing the understanding and capacity building of land rights activists and leaders. As part of the land rights movement's core values of democracy and good governance, popular education campaigns are initiated to enable poor farmers to participate in debates and discourses.

The NLRF was established in December 2004 and is the representative organisation

for all land rights deprived tillers in Nepal, including slum dwellers, landless farmers, tenant farmers, former bonded labourers, former Haliya, Haruwa/Charuwa, and many others whose livelihoods are completely dependent upon agriculture but do not have any land. It is the land rights deprived people themselves that lead the movement. By the time the NLRF convened its second national conference in Dang in March 2008 it had expanded to 42 districts with over 2,200 primary organisations in villages and communities.

Milestones in the history of the NLRF

- December 2004: Organised first national conference in Kathmandu and issued a 15-point declaration on land reform.
- 2004: Organised a nationwide campaign to file writ petitions for claiming tenancy rights.
- March 2005: Organised a mass public meeting at Lamahi, Dang.
- March 2005: National conference of land rights activists.
- April 2005: Organised a hunger strike in Sunsari district.
- April 2005: Contributed to the People's Movement in all 42 districts carrying agriculture tools
- June 2005: Bicycle march from Ghorahi Dang to Bardiya, and Saptari to Siraha with the overwhelming participation of land rights deprived people.
- August 2005: Convened Haliya conference in Dadeldhura.
- September 2005: Participated in the national conference on women and land rights organised by the National Land Rights Concern Group.
- Launched nationwide awareness and protest campaign against the Land

- Bank introduced by the incumbent government in 2005.
- 2005: Instigated a cultural campaign across the country in collaboration with Diyalo Pariwar.
 - Conducted a nationwide consultation on the People's Land Act in 2005.
 - 2006: Staged a mass meeting demanding land rights across the country.
 - 2006: Organised indefinite sit-ins and padlocked the district land reform and land revenue offices in Dang, Banke, Bardiya, Sunsari, Saptari, Siraha, Mahottari and Sindhupalchowk districts.
 - December 2006: Held Chure festival and mass meeting of land rights deprived people in Sarlahi.
 - 18 September 2007: Five-point agreement signed between NLRF and Ministry of Land Reform and Management.
 - May 2007: Organised sit-ins in front of the offices of the major political parties and the official residence of the Prime Minister, demanding land reform. Received a written commitment from the political parties.
 - 1st September 2008: Organised nationwide sit-ins, demonstrations and a mass meeting on land reform in the Terai in Lahan Siraha.
 - Conducted wall painting, mass rallies and sit-ins across the country, demanding the constitution of a high-level Land Reform Commission to ensure land rights
 - November 2008: Organised a 13-day sit-in in the open theater in Kathmandu, alongside movement activities in several other districts. The sit-in elicited a written agreement from the Minister for Information and Communications committing to constituting a high-level Land Reform Commission within a two week period.
- The land rights movement is a people's struggle to overcome injustice and discrimination in favour of freedom and emancipation, to achieve social equality in society. Land is not simply a source of income in Nepal it is the basis for social status and livelihood security.
- The inherent aspects of social justice, its values and principles, and the sense of accountability cannot be imposed by external actors. The process of transformation and social justice is not possible through *ad hoc* actions and superficial thinking but through real social movement as manifested in the land rights movement. Strong people's organisations with committed leadership and careful strategic thinking are essential to the realisation and sustainability of the mission.
- deujaj@csrcnepal.org



Interview with Madiodio Niasse

*Director of the International Land
Coalition (ILC)*



ILC is a global alliance of civil society and intergovernmental organisations working together to promote secure and equitable access to, and control over, land for poor women and men, through advocacy, dialogue and capacity building in order to create opportunities for direct participation at all levels in decision-making on land issues.

Recorded during ILC's visit to Kathmandu in February 2009 to prepare for ILC's Global Conference

Q: As the new Director of ILC what are your initial impressions of CSRC and the land rights movement in Nepal?

A: This is my first mission outside the head office in Rome and the first time I am visiting one of our members in their field of work. CSRC is a very good illustration of the work that ILC is supporting and the impact it is having. I have a very positive impression of CSRC and I am very proud to have CSRC as a member of the International Land Coalition. CSRC received a grant from ILC before becoming a member, through the community empowerment facility, and the impact can be seen here through the NLRF and the landless people that CSRC is supporting. I am impressed by the credibility that CSRC has established in Nepal, vis-à-vis the government, which has facilitated our meeting with the Prime Minister, the Minister of Finance and the Secretary of Land Reform and Management. The credibility is also visible with regard to the donor community, many of whom we have

met this week. Members such as CSRC increase the credibility of ILC and I would be keen to document the approach of CSRC in building a strong land rights movement to use as a success story for others.

Q: Why has ILC chosen Nepal to host the global conference in 2009?

A: It is important to understand that the conference is organised on a biennial rotational basis from one continent to another. Two years ago it was held in Uganda and four years ago in Peru. ILC's Asian members considered all the options before deciding that Nepal would be the best host for the event. Issues of land reform and land rights are more relevant in Nepal today than in any other Asian country. With land reform high on the political agenda, it was the immediate relevance and overall country context that pushed Nepal forward as the outstanding candidate to host ILC's global conference on behalf of Asia.

Q: What are the main challenges that land and land tenure security will face

in the coming years?

A: We have a land problem generally because there is inequality in access to land and land is indelibly linked to human rights and citizenship, especially in the developing world. There are many new pressures affecting access to land and the way land is managed, governed and distributed. One such pressure is demographic; the amount of land available to families is shrinking rapidly, to the extent that it is no longer sufficient to cover many basic needs. Further pressure is related to climate change, which reduces the amount of land available for agriculture through rises in sea levels, lower rainfall and more frequent extreme weather events. There are also the phenomena of new commercial pressures on land, for example international land transactions where rich countries are buying or leasing increasing amounts of land from poor countries and in the process taking land away from the people whose basic livelihoods depend on it. Carbon sequestration schemes can lead to productive land being converted into forest and there is the threat from biofuel production which is in direct competition with food production. These are some of the immediate challenges that threaten land tenure security for the landless and land poor in many countries today.

Q: What role do you foresee for civil society in helping to address these challenges?

A: Land is a power issue and control of land is a political issue. Without a strong civil society the powerful will take the land and the landless will remain excluded. That is why it is very important to ensure that each country has a robust civil society that can work vigorously with the landless, marginalised, poor and excluded to ensure that their rights over land are protected and their voices are heard in the decision making process. This is by no means easy and ILC is facilitating this process by building a coalition of civil society and inter-government organisations to strengthen the capacity of civil society, build credibility at the national level,

provide access to relevant information, and establish a platform for engaging with governments to ensure that the decision making process is informed and inclusive. The role of civil society in the context of land is to improve governance in general and to encourage governments to consult with a wide range of stakeholders, especially the poor. Civil society must provide a counter balance to government and state bureaucracy through linking with local communities and international organisations to help advance progressive pro-poor policies on land issues.

Q: What are your hopes for the ILC conference in Kathmandu and how can the conference contribute to Nepal's land reform process?

A: The ILC conference is a global event, and my aspirations are at both the global level, for the benefit of all ILC members, and at the national level, with Nepal benefitting from the experiences of other members. As a global conference we will discuss fully the emerging issues surrounding land and their potential impact on people's access to land and security of tenure. ILC will draw on the various debates, knowledge sharing forums and synergies to determine our strategic direction for the coming years. We want our members to be exposed to the complexity of the land situation and to be fully aware of the present and future challenges. I'm sure the challenges facing Nepal will provide a useful insight for other members as they engage in their country contexts. We hope also that by bringing together experiences from many other countries and engaging in a joint learning process, without being prescriptive, we will provide an opportunity to the leaders of Nepal to strive towards and benefit from an informed decision making process. ILC will come to Kathmandu to learn but will also bring experience and expertise to ensure a positive, inclusive and fruitful discussion with the government, civil society organisations, the donor community and representatives of landless people.

m.niasse@landcoalition.org

Land Reform in Nepal

*Where is it coming from and
where is it going?*

■ Liz Alden Wily

With the assistance of Devendra Chapagain & Shiva Sharma

Excerpt from the scoping study undertaken for DFID Nepal during September-October 2008. This paper has not been finalised and has not been published. This excerpt is for information purposes only and should not be distributed or quoted without prior permission from DFID Nepal.

TEN GENERAL CONCLUSIONS

1. Land reform in Nepal has largely been a failure

Despite half a century of pledged land reform, equitable redistribution of productive land has not occurred in Nepal.

The state increasingly adopted conventional routes to redistribution including establishing a ceiling on permitted farm holdings and allocation of the surplus to tenants or landless workers. In practice, identification of surplus was limited as a result of tolerated avoidance tactics by many landlords. The process of reallocating those surplus lands identified was also flawed, with very little delivered to tenants some decades on. Registration of tenants was more successful but just as partial in practice. It is estimated that probably only one third of tenants were registered. Few have received the promised share of tenanted land. The most tangible redistribution has been only in recent years but this comprised allocating a mere 1,609

ha of public land to 12,019 freed bonded labourers (*Kamaiya*).

These outputs compare poorly with redistributive reform around the world and which have seen hundreds of millions of hectares handed over to almost a billion beneficiaries.

Distribution of farmland remains only slightly less skewed than it was 50 years ago. Sixty percent of the land is owned by 25% of rural households.

Nearly half the rural population have either no farmland at all or not enough to meet subsistence requirements, let alone secure surplus to aid de-pauperisation. Out-migration from agriculture has become the major escape route but largely excluding the *most* poor. Agriculture itself stagnates.

2. The institutional basis of feudalism has been weakened but its subjects not necessarily liberated

Land reform did succeed quite early on in

undercutting the powerbase of feudal landlordism. However the powers they lost became powers of the central state, not ordinary citizens.

Reforms have also seen the state emerge as the *majority landholder* through nationalisation of forests, wastelands and pastures and the abolition of customary property rights affecting those resources. This too was to the loss of the majority poor.

The earliest and arguably most successful thrust of land reform from the 1950s was to consolidate holdings as fungible *private property*, whereas prior to this, many lands were held to be easily revertible to royalty/ the state. However, without protection of tenants or labour included in this process, this too played its role in diminishing their security of access.

3. Tenancy has neither been abolished nor made fairer

An uncertain tenancy strategy has compounded failure to deliver land to tillers, making many tenants *less secure* than previously in their occupancy and conditions of labour. This is because it has been fully possible for landlords to evict tenants and/or put them on different, annual wage terms. In general, landlords rather than tenants have been liberated from the obligations inherent in feudal relations. Plans from the 1990s to enable registered tenants to gain a share of the tenanted land were sound but have so far been weakly implemented.

As above, most tenants could not secure registration through denial of their tenancy by landlords and other measures.

Failed management of tenancy reform has also been a main cause in the starkly high levels of arable land left untilled; the traditionally non-farming or absentee landlord class preferring to leave farmland fallow rather than letting to tenants whom they fear may claim tenancy rights.

4. Nepal has not been alone in its failures

Reasons for failure in Nepal's land reform mirror those seen in other failed or limited redistributive reforms. The immediate failure has been the leaving of space for landlords to avoid or manipulate new legal conditions.

Successful reforms (and there have been many) have avoided this by being characterised by

- a) fully forceful, comprehensive and speedy implementation;
- b) substantial and sustained support for beneficiaries beyond provision of land, enabling them to launch self-reliant and competitive farming;
- c) the nesting of land reform in a well-thought through agricultural investment strategy and linking this to intelligent off-farm light industrial development;
- d) keeping redistribution out of the marketplace by compensating landlords at below market values and in forms which enable them to only access their compensation by investing in light industrial developments; and
- e) involving beneficiaries from the outset in implementing, regulating and monitoring reforms.

None of the conditions have existed in Nepal despite some being recognised as essential, most notably by the High Level Land Commission of 1994-95.

5. Nepal's reform has always lacked conviction

Driving this has been equally characteristic lack of genuine political will, unwillingness to sacrifice privilege, or fracture longstanding shared interests of the landlord and bureaucratic elite.

Ironically, Nepal's emerging

democratisation over the same period has not helped, depriving the state of the *militant autocracy* which, for better or worse, has been a common factor in those land reforms around the world which were successful during the 20th century.

In recent years the replacement of autocracy with *popularly-driven reform* has become the logical precondition of successful land reform. This requires however much more devolved forms of land governance to work.

6. While constraints and challenges abound, positive conditions for reform exist

New Nepal has revitalised its commitment to land reform. Positive conditions for this exist. These include –

- a) the reshaping of democracy towards more genuinely inclusive representation of the very landless, land poor and exploited sectors which have in the past been excluded;
- b) a more politicised society overall and in which the rural poor begin to find their voice, and
- c) the experience of civil war, which has demonstrated *inter alia* how real land grievance is and awareness that if unaddressed, land grievance may trigger return into conflict.

There are also positive conditions globally.

- a) While classical redistributive farmland reform was most vibrant in the post Second World War period and began to fall away in the 1980s, interest and demand for its reinstitution has sharpened with rising concern as to the plight of world's three billion poor, most of whom live in agrarian societies where farming is a key foundation of livelihood. There is also better understanding of the role which landlessness and homelessness plays in sustaining rural and by

association, urban poverty, especially in situations where it is becoming clear that hoped-for industrial revolutions will be slow and often limited in their absorption of labour.

- b) Redistributive reform has accordingly moved beyond its anti-feudal or anti-colonial origins into a human rights context in agrarian economies.
- c) It is also significant that even with the transitions through which redistributive reform has moved over the last century, recognition remains that while equitable farm ownership is not necessarily a precondition for economic growth, equitable and thence sustainable growth has proven difficult to achieve without it.

7. Scientific reform is emerging as classical agrarian reform

Many lessons of land reform in Nepal and beyond show sign of being taken on board in the 'scientific' land reform to which Nepal has committed itself since 2006. The meaning of scientific reform has been articulated most cogently by the Minister of Finance in his 2008/09 Budget Speech and amounts to classical *agrarian reform*, this comprises ensuring land to the tiller while also investing heavily in agriculture towards its modernisation and shifting excess manpower into off-farm sectors through employment creation.

8. There are doubts as to how committed New Nepal is to redistribution

If there is any danger in this vision thus far expressed it lies in the enthusiasm with which *agro-economic* development is being promoted without a clear plan yet developed to deliver land to tillers.

This has left redistribution vulnerable to tokenism, manifesting already in plans to provide the very poorest (a minority) with tiny and marginal plots (including under

electricity transmission lines) out of public land, this marginality to be offset somewhat by assisted cooperative production by beneficiaries. This falls into a *welfare approach* focused only upon the poorest of the poor, a tiny minority of those needing land.

No mention is made of ceilings or redistribution within the private land holding sector. Even those who have left their land idle will not see this confiscated but subject to heavy taxation – thus encouraging them to sell, but obviously only to those with the means to purchase, thus keeping scarce and needed land beyond the reach of the poor. An observer might conclude that redistribution has fallen off the agenda.

This raises query as to how committed New Nepal really is to wholesale redistribution, and if not, how far the diminishment of public commitment is political and how far it is the result of insufficient thinking through of strategies. While the resistance of larger landlords and their political representatives to redistribution is well known, the content of the *Interim Three Year Plan* suggests the latter has been an equal factor in strategic shortfall thus far. The *Plan* appears to have set aside issues of reform for the proposed Land Commission to resolve and focused accordingly almost solely upon survey and registration systems development. On land reform, it limits its ambitions to already started rehabilitation of freed bonded labourers, a minority of farmers. The budget for 2008-09 also aims to free small farmers from debts.

9. The critical challenge: moving rhetoric into reality

Clear constitutional commitment (2007) has nonetheless been made to abolishing feudal land ownership through scientific reform and within which *land to the tiller* is a founding element. The Common Minimum Programme of the parties endorses this (2008).

Responsibility for thinking implementation through lies with the upcoming high level commission for land reform likely to be finally formed in 2009, and which is to advise government and the constituent assembly accordingly.

It is reasonable to conclude that the welfare approach to land reform represents the *lowest* common denominator which secures cross-party and landlord support. The commission itself is likely to be a multi-representational body embodying diverse positions, especially as to the economic purpose of distributing arable land more equitably, always the pivot of debate. The challenge is how far this body can genuinely move beyond tokenism.

In this process, interest-group conviction thus far has not necessarily been helpful for obtaining a holistic and long term vision or the force needed to apply it. Local and international NGOs which are already fixed on the relatively easy option of aiding freed bonded labour tend to narrow their advocacy to this task. So too do emergent indigenous land rights lobbies, seeking (justifiably) legal acknowledgement of communal land rights, these having been summarily dismissed in the 1960s as not amounting to registrable property. These are important deliverables but not enough on their own.

Humanitarian agencies are meanwhile tending towards full restorative justice cry, some urging immediate restitution of properties or payment of compensation to landlords displaced during conflict years unmindful of the feudal injustices through which such properties were obtained and sustained, or the rights of longstanding tenants and workers on these estates, registered or otherwise.

Donor agencies, anxious to support the government in as neutral manner as possible, may as characteristically fix upon supporting supposedly neutral land systems modernisation, forgetful of the historical bias of survey and registration

to the better-off, in which the longstanding occupancy of the poor frequently failed to be recorded, either because their lands were marginal or because large landlords claim these extra lands. There is also a danger of entrenching fraudulent or inaccurate ownership through too hasty digitization of existing records, digitization tending to take on unwarranted permanency. System-centric reform at this stage may also *reinforce* rather than liberate the inaccessibility and unaccountability of administrative procedures to majority poor landholders themselves.

Modern Nepal thus faces a tricky task of finding a fair, comprehensive, inclusive and workable path towards genuine reform. The signs that it really wishes to are ambivalent. A range of measures sustaining the *status quo* could as easily result, with little changed by 2010.

10. A community based approach to land reform offers a sound way forward

Strategically, should interest in land reform entrench, it will be necessary to look to a *devolved approach* to maximise impact and sustainability. A devolved approach means that each rural community is authorised to take control over and responsibility for its own land relations including redistribution, although working within parameters laid down nationally, and/or at federal state level should this materialise.

While national administrations classically fear releasing any real power to the periphery it is precisely this form of democratisation that is necessary to ensure mobilisation, real inclusion of the majority poor and to allow mechanisms including monitoring to be instituted and sustained. Practical examples where genuine empowerment of local populations to act is desirable include identifying and dealing with idle lands, ensuring tenants and workers are registered in the community and afforded their rights, and ensuring that

communal lands within and adjacent to the community area are not encroached or settled without community consensus.

A devolved approach is generally also essential to avoid slippage into old ways after an initial flurry of activity, often the fate of bureaucratically-controlled reforms. A devolved approach is particularly necessary in New Nepal where reaching consensus among political parties as to land rights may be remote. While the national level bickers, local communities may get on with addressing their land constraints themselves and reach agreements which may be impossible on the national stage. Obviously, as well as being properly empowered to do this, the decisions and actions of communities need to be made within rigorously framed guidelines and limitations, affecting both procedure and strategy. Mechanisms for ensuring that the poorest households are included in decision-making is just one such limitation, particularly necessary where poorer peasants have remained vulnerable to the power-holding of larger land owners and often allied officialdom. A community based approach also has a better chance than top-down strategies mediated through officialdom of ensuring the direct participation of a crucial constituency in Nepal's transformation, *its youth*.

Overall, a devolved approach will allow land and labour reform to be underwritten with the popular ownership needed to enable reforms to be successful rooted and enforced. Additional advantages include flexibility, needed in implementing principles not just by different zones and social community but sometimes by village. Another enormous advantage of a devolved approach is that it allows locally tested piloting, with significant learning-by-doing and replication opportunities. The failure of one community need not necessarily impact upon its neighbours; conversely, the success of one community may trigger demand in the next.

A viable institutional basis for devolved land reform exists in the village development committee (VDC) and which has already been set upon a course of strengthened empowerment as grassroots governance agencies. This includes some new land-related functions by which VDCs collect the land tax and for which purpose they now hold copies of relevant land register entries. Most immediately, it would be upon the basis of community-collected and certified landholding and tenant status information that a much more accurate record of land ownership and tenancy rights may be compiled and inclusive of the many cases of unregistered but longstanding occupancy and land use of an estimated one third of rural households, almost all of them poor. It is upon such community compiled, community approved and externally vetted record that computerisation of records and transaction systems is most viably built. In the short term VDCs would submit copies of changes to a centralised back up district register. There is no reason why over the medium term each community land board/VDC should not maintain its own computerised land register, with district watchdog functions periodically exercised.

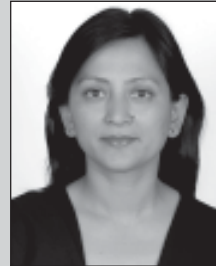
Inherent in the above is also desirable *lateral* expansion of the land reform vision, including revisiting the role of state as majority land owner and extending land reform into the urban sphere and justice sector. Tenure reforms are needed to enable rural communities to establish *communal entitlement of forest and pastoral resources*. VDCs/rural communities may themselves need some reconstruction in some areas to better meet the demands and rights of indigenous groups which have found their interests unnecessarily curtailed. The obvious place for such adjustments to be worked through and agreed is again, at the most local level possible.

With proper investment, delivery on the land reform thread of transformation can be exponentially cost-effective. It may also contribute on the global agrarian stage where many post-feudal or post-colonial societies still grapple with comparable constraints but do not enjoy the window of opportunity afforded New Nepal at this time. It is however just as easy for New Nepal to ignore this opportunity and for business as usual to continue. As ever, the real challenge at this point is political will.



Women's Land Rights

A Significant Step towards Ending Violence against Women



■ Julia Chitrakar

Vice-chair of the National Land Rights Concern Group

Main Theme

Nepalese women from all social strata have intensified their movement to end all forms of violence against them. In order to transform Nepal into a prosperous and democratic nation, it is essential to stop all violence against women and this movement should proceed alongside other social justice movements, including the Dalit movement, the indigenous people's movement, the Madhesi movement and others. Women who are actively involved in public life and politics, whether as CA members, journalists, teachers or students should ensure that ending violence against women is high on the agenda in their respective environments. The existing patriarchal structure of society can only be transformed by speeding up the campaign of women rights and introducing it across all social movements.

To be oppressed is to have no control over one's own life. In Europe and America, where formal slavery persisted for hundreds of years, slaves were bought and sold like market goods. In Nepal, *Kamara-Kamari* (slave men and women) were also traded openly. Critics argue that even in Europe and America, slavery still exists today in various forms, such as the millions of voiceless migrant workers denied the

right to citizenship and compelled to sell their labour in the informal or semi-formal sectors. In the so-called 'developed world' such neo-slaves are also known as 'economic refugees', having migrated from the developing world. In Nepal, the *Halijyas*, *Kamaiyas* and bonded herdsmen still exist as virtual slaves, with their labour being used to provide various services for their masters. Similar to the slaves and neo-slaves, a huge number of Nepali women do not have control over their own lives; their lack of self-determination is caused by the perpetuation of a male dominated system that is protected by state laws and policies, social customs, production relations, education and social psychology. They are beholden to their husbands and other family members in the name of tradition, religion and 'duty'.

In the context of Nepal's rural and agrarian based economy, securing women's land rights is hugely important in order to free women from these 'slavery' traps. To promote the independence of women, it is vital that women's rights be established in relation to ownership of property and the means of production. Without establishing women's rights over land, women in the rural community cannot be empowered and gain respect within their

family and the wider community. Injustice towards women exists in many areas, such as gender discriminatory laws, deprivation from education and basic health facilities; but the mission to establish women's rights over land is of paramount importance. Only by establishing women's land rights, will it then be possible to transform the political economy of gender injustice and other structural causes of 'underdevelopment' in Nepali society. In the process of developing 'scientific' land reform, the politicians and policy makers of 'New Nepal' must remember to specifically include women's land rights as a priority agenda.

Issue, Context and Background to Women's Land Rights

It has been over half a century since people began chanting the slogan *Jasko Jot Usko Pot* (Land to the Actual Tillers) and still a huge number of peasants have not received land ownership. This is why we continue with the social movement for real land reform.

However, even the advocates of land reform; the political leaders, academics, administrators and NGO activists do not recognise women, acknowledging only male farmers. This distorted view has led many people to see "land reform" as an exclusively male issue, creating a major challenge in bringing women's rights into the land rights movement.

Women's labour contributes over 60% of Nepal's Gross Domestic Product in the agricultural sector, but they own virtually no land. In this context, the issue of women's land rights is raised. The pervasive thinking is that it does not matter whether the ownership of land and other property is in the hands of men or women as the benefits will ultimately be shared by the whole family. However, reality paints a very different picture. Without land, women are disempowered politically, economically and socially. This is why it is important to have

a land rights movement with equal participation by men and women.

A brief account of injustice

In Nepal's latest census, women accounted for 51.1% of the population and fall behind men in all the key areas, including education, health, life expectancy etc.

According to the Human Development Report (UNDP), women contribute 60.1% of the total agricultural production, but only 8.1% of women own land; of which only 4% own land used for both housing and farming.

Source: Nepal HDR 2004

Overall Situation

According to the Population Census of Nepal 2001, of the total agricultural population, 1,037,785 families do not own any land, yet their livelihoods depend entirely on farming.

The same census informs us that 217,785 families do not even have a small piece of land for a shelter; and are totally dependent upon the landlords who use this insecurity to exploit their labour. The *Haruwas*, *Charuwas*, *Kamajyas*, *Haliyas*, landless and small tillers exist in a pitiable situation with no land, no security of abode and an insufficient wage. Whether land deprived people live in their traditional area or have migrated to a new area, they persistently belong to the poorest and most oppressed community in the country. The situation for women in these families is comparable to absolute slavery!

Even in rich and high caste families, women's status is inferior to men. Traditionally women do not have the right to paternal property, creating a dependency on the property owning gender; the same men who also control the state,

administration, business and industry. Although the women's movement in Nepal has raised the issue of equal property rights, there has been superficial support in the political sector and the issue of women's land rights has not been adequately raised.

Failure of Development Programmes Initiated by Governments and Donors

Over the last 50 years, endless lengthy documents have been prepared (comprising tens of thousands of pages) by the Planning Commission of Nepal, high level government agencies, United Nation's development agencies, international donor agencies and the national Non-Governmental Organisations working for development. Prior to the last people's movement that brought a democratic republic, none of these agencies or alleged experts acknowledged that poverty was linked to feudal land ownership. Land reform did not appear on the development agendas of donor agencies or state planners and land reform was absent from poverty alleviation programmes.

Instead, there have been numerous projects where the landless poor have been given training on kitchen gardening, oriented on the importance of hybrid paddy farming and issued with hybrid citrus saplings. This attempt at poverty alleviation is nothing but a mockery of the poor. Rather than taking the time to examine the underlying structural causes of poverty these development actors have imposed superficial insubstantial programmes that are designed to fail. In this context, it is difficult to establish pro-poor land reform on the development agenda. Such has been the case throughout the Rana period, the Panchayat era and the period of multiparty democracy after 1989. The so called Land Reform in 1964, was in essence nothing more than a 'drama',

which ultimately promoted the landlord class instead of uplifting the poor.

Women's Land Rights: In Simple Words

First and foremost, the political parties of Nepal, national leaders, policy makers, international donors and the activists of social movement need to understand the rationale for raising the issue of women's land rights.

From a social justice perspective

In the context of Nepal, it is essential to understand the issue of land rights as intrinsically linked with fundamental human rights. Women's rights are an inseparable part of human rights; it is a rational matter of equality between men and women in family and society. Land is a natural gift, not a man-made product; one who preserves the land earns the right to ownership. The men and women who work on the land deserve the equal right to own it. Equality in land rights is a matter of social justice.

Empowerment perspective

The government, political parties and development agencies have claimed to support the empowerment of women, Dalits and the poor. Women's land rights is the foundation of the economic empowerment of rural women involved in agricultural production. Women need land to boost their confidence, increase their personal capacity and raise their collective status.

From the point of view of livelihood

Observing the life of rural people, it is obvious that land is the most important factor contributing to a sustainable livelihood. Rural women are the real managers of land and the provision of women's rights over land would contribute significantly to the entire rural sector.

To increase production

Experience shows that implementing the policy of *Jasko Jot Usko Pot* (Land to the Actual Tillers) contributes significantly to increasing agricultural production and creates the foundation of industrial development. Giving land ownership to women involved in farming will therefore increase general economic productivity.

From environmental point of view

It has been documented (from Nepal and the world) that the knowledge, skill and responsibility of land management and environment preservation is in the domain of women. Land ownership for women is a sustainable move for environmental preservation.

Some positive attempts

The 11th amendment of *Muluki Ayn* (Civil Law) has given equal rights to paternal property for daughters and sons. Paternal property incorporates the fixed as well as current assets in the family owned by parents and forefathers. The current 3-year Interim Plan of the Government of Nepal has mentioned the provision of ensuring women's rights to land. For that purpose, it has mentioned that the right to use the land will be ensured for the *Kamaiyas*, landless people and those who have been residing in unmanaged settlements. It also stipulates that land ownership certificates will be issued jointly in the names of both husband and wife. The land registration charge has been reduced for women, with a 25% concession for registering land in the name of a woman.

In 1991, the government signed the Convention against All Forms of Violence against Women, thus committing to non-discrimination in all sectors. The agreement clearly stated that this is the way towards self-respect and economic empowerment. The agreement granted women the right to gain economic benefit from the family, including the right to gain property and

keep property in mortgage. In particular, the right to use facilities such as housing, sanitation, electricity, transportation, drinking water and communication are granted to women living in rural areas. Though the government has signed the agreement, it has not been transformed into state and legal policy.

The present Interim Constitution of Nepal has opened the way for scientific land reform, after the major political parties agreed upon an agenda. A high-level land commission has been formed (though it is not yet complete) and several community based organisations have been established throughout the country, involving land rights deprived men and women. Through this effort, the poor and oppressed class has raised its voice for women's land rights from the community level; a very important step in the process.

Several NGOs including Community Self-Reliance Centre and other civil society organisations have raised the issue of women's land rights and a number of female land rights activists have been trained. Some international NGOs have now also begun to raise the issue.

Steps to Move Ahead

1. It is imperative to deepen the discourse on women's land rights from community level to district and national level. At each level, context analysis of land from a gender perspective should be performed.
2. It is equally crucial to establish a system of joint ownership of land between men and women in the context of a married couple holding a farm; at the same time, if the farm is being managed by a single woman, or a divorcee woman, or a widow, it must be registered under their sole ownership.
3. Land traditionally used and conserved by the local community should be

managed and owned by that community; such land should fall under the control of an authorised committee elected by the local people. Such a committee should have at least 50% female membership.

4. To promote the issue of women's land rights in relation to their fundamental human rights, advocacy campaigns should be directed at the state, civil society and the international community.
5. Local women's groups should be given authority to use barren land for income generation. Legal provision

should be established to prevent the state from interfering in women's activities in these circumstances.

6. The land rights of Dalits and indigenous nationalities should be integrated with the issue of women's land rights in each community.
7. The women's movement should take up the issue of women's land rights seriously and integrate it with their campaign to target the root causes of violence against women in Nepali society.

nepalijulia@gmail.com



Interview with Tony Quizon



Antonio “Tony” Quizon is a consultant for the *International Land Coalition*, and *Chair of the Center for Agrarian Reform and Rural Development in the Philippines*. Formerly *Executive Director of the Asian NGO Coalition*, he continues to work with small farmers and non-profit organisations in the Philippines and Asia, on issues of agrarian reform, resource management, and building land-to-market linkages.

Q: The Philippines is your home and you have experience of land reform there; in your view has it been a success?

A: Unlike Nepal, the Philippines has a long colonial history. Nepal is a landlocked country, while the Philippines is composed of 7,100 islands. However, we face some common issues in the skewed distribution of land and the need for agrarian reform.

The Philippines has gone through several land reform programs: the abolition of share tenancy in 1963; the land reform of rice and corn lands in 1971; and the Comprehensive Agrarian Reform Program (CARP) in 1988 which was instituted following a peaceful People’s Power Revolution that toppled the Martial Law regime of President Marcos. We passed a new Constitution in 1988, which included a provision for agrarian reform. The CARP program of 1988 was instituted in direct response to the nationwide peasants’ campaign - the *Congress for a People’s Agrarian Reform* - launched in May 1987, bringing together 12 national federations of farmers, rural workers, rural women and fisherfolk organisations, and supported by

hundreds of CSOs.

The CARP itself turned out to be a compromise law, different from what the farmers’ movement had initially lobbied for in Congress. The many CSOs and farmers’ organisations eventually decided to cooperate in the implementation of CARP, in order to maximize whatever benefits it could bring to improve the plight of farmers and landless workers.

Based on our experience, on-field implementation of agrarian reform has met with many problems, including harassment, threats and occasionally violence against farmers and landless workers. Sometimes, the law is used against farmers, as when they are criminally charged with “theft” for harvesting their own crops on the landowner’s land. Many landowners and politicians have tried to circumvent reforms, by re-classifying landholdings, redistributing land to their relatives, and others. We have also had to contend with poor land registries, conflicting land claims, and poor land classification systems.

Today, 20 years later, the CARP program

has yielded mixed results. On the one hand, it is reported that around 4 million hectares have been redistributed to approximately 4.2 million families; furthermore, impact studies show a positive correlation between land redistribution and increases in income, education and conflict reduction. However, these official statistics also hide aspects of under-performance; with only around 50% of the private lands targeted for redistribution being covered, while 1.2 million hectares, the majority of which consists of private lands, have been left untouched. These include large commercial landholdings, many of which are 50 hectares or more and owned by rich families linked to the government, or the Philippine Congress. Moreover, only 42% of the beneficiaries received any form of support services from the government over the past 20 years. Perhaps the biggest overall impact has been the relative peace in the countryside, and the economic impetus that this “peace dividend” brings.

In summary, CARP has directly benefitted those who received land and support services; but its actual implementation has still been limited to date. In short, the Comprehensive Agrarian Reform Program in the Philippines remains as unfinished business.

The main issue now is that the Philippine Congress, the majority of whose members are big landowners themselves, has refused to allocate new funds for the agrarian reform program. Since last year, farmer organisations and CSOs have continued to lobby the government and the Philippine Congress.

Q: What are the main lessons for land reform that can be learned from the Philippines’ experiences?

A: There are many lessons, but I’d like to highlight a few. Firstly, agrarian reform should include not just land redistribution, but also support services such as seeds, credit and other inputs. Unless farmers are able to make their lands productive, they are likely to lose their lands again because of poor harvests or the high costs of credit

offered by moneylenders. These support services must be timely, concurrent with receiving land ownership. Farmers often depend on landlords for their inputs and credit needs, so when the land is transferred to them, their links with the landlord are severed and they lose their access to these inputs. If no support services are made available, farmers will be forced to pawn or re-sell their awarded lands.

Secondly, for agrarian reform to succeed, farmers must build strong peoples organisations. These will act as vehicles to bring their collective political voice into national policy discussions on agrarian reform and assist in the actual field implementation of the reform process. This will require land deprived people to build strong federations or coalitions; once the reform program is instituted, the roles of these farmer organisations may evolve to become conduits or channels for government and external assistance, and later into self-help economic units or cooperatives.

Finally, agrarian reform is not only about ownership but also about ensuring land access and tenure security. This includes guaranteeing decent living wages and benefits for farm labourers, instituting land tenure security and equitable harvest sharing for tenants and ensuring some degree of access to common property resources.

Q: Should the state be active or passive in the process of land redistribution?

A: Agrarian reform is essentially a “political process”. If land is power, then the redistribution of land also involves changing power relations. There seems to be a broad consensus that the state has an active role to play in instituting agrarian reforms, for three reasons:

Firstly, it is the only institution that is legally vested with the powers of *eminent domain*, which may be required in order to implement redistributive reforms. Secondly, it has the broad administrative capacity and presence to implement wide

reaching reforms, and thirdly, the state has both the duty and responsibility to establish the broad policy environment for the effective functioning of society.

Yet, when the state takes on the role of “reformer”, questions often arise. In the Philippines, we often ask ourselves; “can the state truly assume an ‘activist’ role, when in fact our officials belong to the landed class, with personal interests to protect?” Over the past 20 years, the main opponents to implementing agrarian reform have in fact been local and national government officials, members of the military, political parties and members of the Philippine Congress. Both farmers and government employees of the Department of Agrarian Reform have been subjected to harassment, threats and occasionally violence. Even when agrarian reform is implemented under one government, succeeding government administrations and political elites tend to reverse any gains that were made. This is why it is important to ensure that civil society plays an active role in agrarian reform policymaking and implementation. Civil society acts as a counter-balance to the government, encouraging political willpower and acting as a watchdog against corruption and negligence.

Many of the past agrarian reform programs in East Asia were instituted under US occupation, or by autocratic regimes (as in Japan, Taiwan, Korea, China and Vietnam). In the Philippines, as in Nepal, our challenge has been to implement agrarian reform within a democratic framework.

Q: What are your views on market led land reform?

A: The approaches of market-led land reform include providing support for land titling, facilitating land markets and providing credit (through land banks) for land purchases for the poor; all under the principle of “willing buyer, willing seller”. The overall framework is to improve information, reduce transaction costs,

strengthen the “land market” and make credit available for the poor to purchase land under more affordable terms and conditions. An integral part of this approach is the need to improve land administration, hence many “land administration projects” have been instituted in Asian countries and elsewhere, and to improve systems for titling, cadastres and registries. Today’s global marketplace requires formal and legal systems, the privatisation of land and property and the creation of land markets in order to mobilise private investments.

However, the market-assisted land reform (MALR) approach cannot be considered as “land reform” when land sales are based on “market rates”. It cannot work in the context of highly unequal societies where ownership of land is greatly skewed. It ignores any rights-based approach and fails to deal with systems of customary rights and communal ownership. Moreover, MALR relies on business negotiations between landowners and poor farmers; clearly no amount of credit assistance or improved market information can compensate for the relative lack of organisational and political power in the hands of poor landless workers and peasant farmers.

In the Philippines, the government itself rejected the MALR approach, many years ago. Back in 2001, a World Bank feasibility study for the Philippines showed that the valuation of land prices under a market-assisted scheme would have been higher than the government’s own land valuation system. In short, MALR would have resulted in higher land prices for poor and landless Philippine farmers under the Comprehensive Agrarian Reform Program.

Land is never just a commodity. It is a factor of production, a capital asset, a source of human security and community, and a source of identity. In Nepal, land ownership is directly linked to a person’s access and rights to many basic services. As such, land represents a basic human right.

Q: Opponents of land reform argue

that it leads to fragmentation and land plots that are too small for viable agriculture. What would you say to this argument?

A: In Nepal today, farmers are already cultivating their crops in small and highly fragmented farm plots. Even without land reform, this is the given reality of how agricultural lands are actually cultivated and managed.

Several options could be explored, including consolidating products, farm inputs, or collectivising transport and marketing. This would be the role of cooperatives or community organisations; these would need to be established.

On the other hand, those who espouse land consolidation in the form of large farms should also be careful about the type of agriculture that they will be promoting. For instance, the use of farm mechanisation might be profitable in countries where land is abundant and farm labour is scant. But in Nepal, which has abundant farm labour, mechanisation might only lead to displacement of agricultural jobs. What is important is that we are clear about our objectives.

Q: People's Organisations are the foundations of social movements. What are the lessons and challenges in building and sustaining People's Organisations?

A: As a community organiser, often the first challenge is how to gain the community's acceptance and trust, and then to gradually help poor people to understand, analyse and then act on their local situation. Sometimes, we have to start with small victories, such as building a community well or writing a petition, before taking on larger issues and arranging collective actions such as a land march. The power of poor people lies in their organisation, and people's organisations grow as they gain more confidence with their small victories.

Often, we build common-interest groups (affinity groups or neighborhood clusters)

each composed of 10-30 people/households. These clusters then come together to form a community based organisation (CBO) or people's organisation (PO). From personal experience, 30 appears to be the maximum number for a basic cluster, because it still allows face-to-face discussions.

Sustaining POs is a bigger challenge. How do you build more self-reliant organisations that operate with locally generated resources? How do you link POs into federations and social movements? As many POs are headed by traditional village leaders, how do you address the challenge of building new, younger leaders? Building leadership values within POs is also very important. While POs remain weak, they will be ignored, but when POs become strong, their leaders are courted by political parties, commercial interests and other groups, for votes, for political influence, or for contracts and concessions.

Finally, in building POs we must believe in the poor, and in the "extraordinary possibilities that ordinary people bring."

Q: What role can the international community play in assisting Nepal's land reform agenda?

A: Land reform itself is a political act, and land reform is an integral agenda in the Comprehensive Peace Agreement of November 2006. As such, it is really the task of the people of Nepal to discuss and build consensus on their own land reform agenda. To me, this is very important.

The role of the international community will be to provide opportunities to exchange with other country experiences. The convening of the 2009 ILC Global Assembly in Kathmandu is expected to contribute towards deepening the ongoing debate on land reform in Nepal, by providing a wealth of experiences and lessons drawn from other countries in the ILC network. Through ILC and the Asian NGO Coalition we would also welcome an exposure visit to the Philippines.

tonyquizon@yahoo.com

Nepal & Bolivia:

A comparative analysis of land issues and constitutional approaches



■ Luz Gomez-Saavedra

CSRC

The first thing that springs to mind when reading an article discussing Nepal and Bolivia could be: Why compare land rights issues in two such different countries? There seems to be little connection between the two. Nevertheless, in a globalised world, both countries share common global and local challenges, with both nations undergoing momentous political change, involving the powerful participation of civil society. Additionally, both countries have recently enacted, or are in the process of enacting, new constitutions, establishing the legal bases for a new political, social and economic order.

This article compares the provision for land rights in the Constitution of Bolivia and the Interim Constitution of Nepal, paying particular attention to marginalised groups such as women and indigenous people, and the global concern for overcoming social injustice through the action of civil society groups.

Firstly, I will briefly establish the country contexts of Nepal and Bolivia, including the political and social scenarios which led to the drafting of new constitutions.

Secondly, I will analyse and compare the legal aspects of the constitutional provisions on land reform and rights, with particular focus on discriminated groups such as women and indigenous people. Finally, I will discuss the challenges that face civil society groups and the strategic options to advance the cause of social justice and land rights.

Nepal and Bolivia, despite their differences, share a common history of inequality, discrimination and exploitation, particularly in relation to access to land for large marginalised groups. Land has far reaching socio-economic implications in both countries; it is a vital for citizenship (and derived rights), key for participation in public affairs and is a main source of identity. The two countries are experiencing the great challenge of implementing political, social and legal change, the corollary of which has been the enactment of new constitutional orders, which pay particular attention to existing inequality and discrimination.

Since its unification in 1768, Nepal's 240-year history has been dominated by a system of hereditary monarchy¹. The

¹ Democracy was briefly established between 1959-60 and in 1990-1996 (officially a parliamentary monarchy). Nepal abolished the monarchy and adopted political form for a Federal Republic with the promulgation of its new Interim Constitution on 15th January 2007 (coming into force on 28th May 2008).

decade-long armed conflict that started in 1996, ended with a multi-party agreement in 2005, the peace deal of 2006 and the promulgation of an Interim Constitution in 2007. The CPN-Maoist party won a convincing election victory on 10th April 2008, with a commitment and mandate to overcome historical discrimination and inequality; particularly in relation to feudal land ownership. In Nepal, land has three distinctive geographical areas, Terai (lowland plains), hills and mountains, and has always been at the core of Nepali culture, politics and society. The relationship between poor people and land resources is the main cause for tension between marginalised farmers and the elites of Nepal (Raj Upreti, 2008:2).

Bolivia is one of the poorest countries in Latin America; since its independence from colonial Spain in 1825, the elite white population (15%) have ruled over the indigenous majority² against a backdrop of civil unrest and significant economic disparity. The indigenous majority faced systematic discrimination and entrenched inequality. In December 2005, Evo Morales won a landslide victory in the national elections, becoming the first elected president of indigenous origin, with the 'promise to empower the excluded indigenous majority' (ICG, 2008). In Bolivia, land has been traditionally controlled by a tiny minority of landlords, called *terratenientes*, despite two agrarian reforms, in 1953 and in 2006.

In both countries, the mobilisation of civil society has been key to the transition of political power and ensuring victory for

their current democratically elected governments. This essential fact has created a particularly encouraging atmosphere for civil society groups to participate in the current process of change.

Constitutional comparative analysis

Both constitutional texts, on the one hand promote state-lead land reforms (in the respect of private ownership of land within limits); on the other hand, they deal with historical inequalities and discrimination faced by marginalised groups such as women and indigenous peoples, regarding access and control over land, as well as interlinked and fundamental socio-economic rights for the whole population³.

While the Bolivian Constitution guarantees respect for the right to property, both for individual and collective land, this right is conditioned with accomplishing a social or eco-social function⁴ (Art. 393). The Nepali Interim Constitution does not place any such social obligation on the legality of private ownership and does not fix a maximum ceiling for land ownership. In contrast, the Bolivian text establishes a maximum limit of 5,000 hectares of land property and forbids by law the *latifundio* (large land estate).

It is interesting to note that both countries' constitutions establish compensation mechanisms for state-seized land (Art. 18 Nepal, Art. 401 Bolivia). In both constitution-making processes this was a

² The population of Bolivia is composed of 36 indigenous groups, amounting to 55% of the total population. Additionally, the mestizo (mix) population accounts for 30%. From the indigenous groups, 30% are Quechuas, 25% are Aymaras and the other indigenous groups include Chiquitano and Guaranies.

³ For instance in the Nepali case, the right to health and a clean environment (Art. 16), or food security (Art. 18) and in the Bolivian case, the right to clean environment (Chapter 5, Section I), health and social security (Chapter 5, Section II) or water (Art. 373).

⁴ Article 397 (ii) of the Bolivian constitution defines it as "the sustainable use of land by the indigenous native communitarian peoples and communities, as well as that done by the small property and which constitutes the source of subsistence and welfare and socio-cultural development of their holders. In the accomplishment of the social function the customary norms of the communities are recognised."

hotly debated point, given the conflict sensitivity issues surrounding land property requisition and its challenge to the established elites.

On the relationship between land and those who work the land, Bolivian prohibition of the *latifundio* should be understood as “the unproductive tenancy of land; land that does not accomplish its economic and social function; the exploitation of land through a system of servitude, semi-slavery or slavery in the work relationship between owner and workers” (Art. 398). The Nepali Interim Constitution also tackles the unequal and discriminatory practices of landlords towards workers (Art. 35) by positively discriminating in favour of marginalised groups and prohibiting “untouchability [caste] and racial discrimination” (Art. 14); further establishing directives for state policies to address “landless, bonded labourers, tillers and shepherds” (Art. 33 (i)). In fact, both constitutions deal widely with the discrimination of marginalised groups, and recognise their complex realities.

In the Nepali case, repeated stress on the interests of “women, Dalit⁵, indigenous tribes, Madheshi community” and other oppressed groups are highlighted in order to overcome disparities in rights enjoyment within Nepali society and the responsibilities of the state (Part 4 of the Interim Constitution of Nepal). In particular, the recognition of equal land rights for women and indigenous tribes is a common trend in both constitutional texts. Overcoming feudal or colonial exploitative structures is envisaged through the active involvement of the State; by the promotion of ‘scientific land reform’ in the Nepali case (Art. 33 (f)), and by state regulation of the land market (Art. 396) and land tenure. Furthermore,

fundamental to both texts is the prohibition of discrimination against women (Art. 402 Bolivia, Art. 20 Nepal) and the recognition of communitarian land tenure by indigenous peoples (Art. 403 Bolivia, Art. 21 Nepal), including diverse measures of access and control over land for both groups.

The preamble to Nepal’s Interim Constitution recognises the “historical struggles and people’s movements for democracy, peace and progress” while the Bolivian fundamental text also underlines the “past struggles, indigenous uprising and social and trade union mobilisations”. Both texts emphasise the importance of civil society and their legitimate participation in the formation of political, social and economic orders, including access to and control over land. Interestingly, most land-reform experts agree that successful land reform involves an inclusive process with public participation; a bottom-up approach which takes into account those who have been systematically marginalised from decision-making powers over their own sources of livelihood, land access and control.

What then are the challenges for civil society groups in contributing to the land rights movements?

One clear strategy is to pay particular attention to the conflict potential of land reform, as a means of changing existing orders and elite domination. Through democratic, rights-based and peaceful means, civil society action can advance the claims of marginalised stakeholders to be included and accepted in the decision-making process. The centuries of exploitative practices and endless social struggle must be taken into account when aiming for timely and effective change. There are many forms of core

⁵ Dalit or ‘untouchable’ constitutes the lowest category of people in the hierarchical caste system of Hindu origin. For more information regarding the discriminatory consequences of the caste system in Nepal, see D. Bahadur Bista, *Fatalism and Development* (1991)

discrimination which will be resistant to change; caste, gender, religion and ethnicity all govern the nature and structure of land ownership and access. The need to overcome feudal Nepali structures and colonial inherited Bolivian practices⁶ is firmly rooted in both constitutional texts; this can serve as a platform for civil society movements to challenge social injustice.

Globalisation poses both threats and opportunities for civil society groups advocating for land rights. Threats include privatisation and the increasing control over natural resources by multinational corporations, impacting on access to, and control over, land for the rural poor. Opportunities include the potential for strategic alliance building at the global level, in terms of advocacy, lobbying and

knowledge sharing, while maintaining a strong grass-roots presence. The celebration of the International Land Coalition's Global Assembly in Kathmandu in April 2009 is an excellent example of these positive exchanges.

Finally, civil society groups fighting for the recognition and respect of land rights must advocate an equitable and socially just structure for land tenure, as an effective means of maintaining sustainable peace and social justice. Given the context of both Bolivia's social struggle and Nepal's civil war, this point is of particular importance. For land reform to be a success, the public participation of civil society is essential in shaping the future of land ownership in Nepal and Bolivia.

luznepal@gmail.com

References

- Adhikari J, *Land Reform in Nepal. Problems and Prospects*, December 2008
- Bahadur Bista D, *Fatalism and Development. Nepal's struggle for modernization*, 1991
- Community Self-Reliance Centre (CSRC), *Land First, Occasional Journal on Land Rights*, Volume 7, July 2008.
- *Constitución Política del Estado, Bolivia*, 2008
- *Interim Constitution of Nepal*, 2007
- International Crisis Group (ICG), "*Conflict history: Bolivia*", accessed on the 2nd February 2009: http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=12
- International Crisis Group (ICG), "*Conflict history: Nepal*", accessed on 2nd February 2009: http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=79
- Raj Upreti B, Raj Sharma S, Basnet J (eds.) *Land Politics and Conflict in Nepal. Realities and Potentials for Agrarian Transformation*, October 2008



⁶ Both expressions are borrowed from the Nepali and Bolivian Constitutions.

Forming the high-level Scientific Land Reform Commission

Opportunities and challenges



■ Ashraf Hussein

Land Rights Adviser, MS Nepal/CSRC

The cabinet meeting on Wednesday 10th December which decided to form a high-level Scientific Land Reform Commission (SLRC) under the leadership of Haribol Gajurel, a Maoist central member, could be an historic opportunity to build a new democratic and inclusive Nepal, by addressing one of the root causes of poverty and conflict, Nepal's greatest challenges. It could also be another missed opportunity, if the mandate, role, transparency and inclusiveness of the commission's work are not fulfilled.

Maybe it is too early to speculate upon the commission's future work; instead this article aims to broaden the debate and highlight the challenges, helping the land rights movement to advance the aspirations of the land deprived, landless and marginalised sections of society.

Observing the politics of land in Nepal, it is clear that there is a consensus among political parties and civil society organisations that scientific land reform is needed in Nepal. However, what we mean exactly by scientific land reform, is still very much open to debate.

To begin with, the word "scientific" in the title of the commission; "Science" or "religion" or "national interests", among other slogans, have historically been used around the world to legitimise the interests of the dominant elite. It is very important

to realise that land is a political issue and there is no consensus among social "scientists" on the best model of land use, or tenure. History shows us that agricultural productivity can succeed or fail under systems as varied as small holdings and large commercial farming. The term "scientific" therefore should be used to stress the importance of productivity but equally the issue of social justice.

On the other hand consensus has almost been reached in regard to land reform representing the interests of different social classes, and that including them in policy formulation and implementation will give the land reform process the best chance of succeeding. Also clear legal procedures for acquiring and transferring property rights over land are a prerequisite for increasing productivity and reducing conflict.

Technocrats, experts or scientists should not monopolise the discourse on land issues. However, their role is vital to provide information, facts, models and policy options for civil society, the land rights movement and political parties.

Land reform can mean many things to many people, depending upon their interests, agendas and aims. In a very broad sense, for political scientists and democracy advocates, land reform means an end to all forms of bondage that enable powerful

elites to dominate vulnerable tenants and landless labourers. Land reform for a landless farmer means gaining access to a piece of land to secure their livelihood and ensure food security and shelter for their family. For many technocrats and international institutions with a neo-liberal orientation, land reform means establishing institutional mechanisms to enable the market to decide who are the most efficient land holders, capable of increasing productivity and producing products with commercial value for export, regardless of social justice and nation building, betting that the trickle down effects derived from growth will take care of poverty and inequity.

Each of the interests presented above has its social and political cost and implication; occasionally there might need to be a trade off or compromise between different social classes or development priorities. That is why the challenges facing the work of the Commission are huge. It is very important for the Commission's work to take into consideration the fears of some Madheshi parties on redistributive land reform and incorporate them into the policy making process. The incorporation of historically marginalised groups is another challenge for the Commission.

Despite all the ideological differences, class interests and different models of land reform, it must be agreed that an inclusive process be adopted, involving all stakeholders whose livelihoods depend on land, before creating a legal framework for land management or distribution.

The above mentioned point brings us to the challenges and tasks facing the land rights movement and civil society organisations to promote the work of the Commission. Their basic role is to keep their constituency informed of all discussions taking place in the Commission and the potential impact of the proposed policies on their lives. They should inform the Commission of the daily struggle experienced by ordinary people in their communities. It is the responsibility of the land rights movement to explain the

meaning of land reform in a way that rationalises any unrealistic expectations of the huge landless class. Land reform does not mean that every landless person will automatically receive a piece of land; neither does it mean that productive landowners who gained their land lawfully should worry about their property rights. However, meaningful land reform should guarantee that the direct producers and tillers have security of tenure and fallow land should go to those who are able and willing to cultivate it. Public land could also play a significant role in reducing the numbers of landless, if the identification of authentic landless people is carried out in a democratic and participatory manner within a clear legal framework.

One of the issues that should be considered by the Commission is the diversity of local settings within Nepal, in relation to land reform models. It would be an effective measure for the Commission to delegate part of its authority and mandate to regional and local bodies to discuss their desired land reform models.

The most important aspect of land reform is its implementation. Many land reform schemes and plans in Nepal, and elsewhere, which had good, rational aims and intentions, have not achieved their targets because of a lack of transparency, political nepotism and no public monitoring of the implementation process.

While Nepal is in the midst of an ongoing discussion on the new Constitution and the role played by federal state and local communities, it is very important for the Commission to study and provide options for the roles of district and regional level bodies that are responsible for implementing land reform laws and policies.

The last aspect is one that makes us more optimistic about the outcome of this commission compared with previous attempts; namely its formation and working modalities are taking place in the context of a new federal democratic Nepal.

ashraf.hussein@yahoo.com

13 Day Sit-in Protest by the National Land Rights Forum

The National Land Rights Forum (NLRF) organised a 13 day sit-in protest from 17th–29th November at Shahid Manch (Martyr Theatre) in Kathmandu. The main objective of the sit-in was to pressurise the government to form a high level land reform commission with the representation of land rights deprived people. The sit-in was followed by several activities, including the submission of a reminder memorandum to the government of Nepal (via the District Administration Office in 16 districts), wall paintings, rallies, and collecting for the movement fund to sustain the sit-in (mainly in the form of rice).

The protesters were visited by over 70 Constituent Assembly (CA) members, political leaders and top government figures, such as Mr. Krishna Bahadur Mahara, the Minister for Information and Communication, Mr. Kiran Gurung, the Minister of Forestry, other government officials and human rights defenders, all coming to display solidarity with the protesters. On the 8th day of the sit-in, deputy Prime Minister and Home Minister, Mr. Bam Dev Gautam,

summoned the protesters for dialogue which led to a consultation with the Prime Minister and the cabinet. Finally, on the 13th day of the sit-in, successful talks were held between the Prime Minister and the tillers concluding in government spokesperson and Minister for Information and Communication, Mr. Krishna Bahadur Mahara, signing a four-point agreement with Mr. Baldev Ram, president of National Land Rights Forum, at Shahid Manch.

The agreement provided for the formation of a high-level Land Reform Commission within two weeks, ensuring the reasonable representation of land rights deprived people within the Commission. The agreement approved introducing a people-oriented land act that addresses all the issues related to land ownership and management, abrogating existing landlord-oriented Land Acts and to stop evicting tillers, until and unless, the process of land reform was complete. The National Land Rights Forum withdrew its 13 day sit-in protest upon the signing of this agreement with the government.



Sit-in protesters outside Shahid Manch

NLRF's Representation in high-level Land Reform Commission

The government formed a high-level Land Reform commission on 10th December 2008, allocating one seat to the NLRF, who nominated Mr. Baldev Ram, the NLRF Chairperson, to represent all land rights deprived people.

A resident of Madhupatti-6, Saptari District, Mr. Ram, 55, is well known following his leadership in the Chamar Andolan movement that took place in Siraha and Saptari districts in 1999. Mr. Ram has a long history of sustained struggle against poverty, inequality and injustice and has been recognised with many prestigious awards.



Meeting held between the Prime Minister, the NLRF Chairperson, Mr. Baldev Ram, CSRC Executive Director, Mr. Jagat Basnet, and CA member, Ms Shanta Chaudhary, to resolve the sit-in protest and form a high-level Land Reform Commission

The International Land Coalition's (ILC) Biennial Global Assembly to be held in Nepal



Meeting between the Prime Minister, ILC and CSRC to discuss the forthcoming ILC Global Conference being held in Kathmandu

The International Land Coalition (ILC) is a global alliance of civil societies and intergovernmental organisations working together to promote secure and equitable access to, and control over, land for poor women and men through advocacy, dialogue and capacity building. Initiated in 1995, ILC is currently composed of 65 organisations including UN agencies, international and bilateral donor agencies and civil society organisations. ILC represents over 40 countries, through its network of organisations who work together on land policies and practices, through sharing knowledge and experiences.

ILC's third Global Assembly of Members will be held in Kathmandu from 21st-24th April 2009. The assembly's theme will be "Securing Rights to Land for Peace and Food Security" and will be local host by Community Self Reliance Centre (CSRC), an ILC member. This international event will bring together some 150 representatives from Asia, Africa, South America and Europe including policymakers and field practitioners. The government of Nepal have shown a keen interest in participating in this event.

Land Deprived Women carry out *Plough and Yoke* Procession

With the government's decision to form a high-level Land Reform Commission, land deprived women in various districts, including Siraha, Saptari, Dang, Banke, Bardiya and Mahottari, carried out a procession holding *ploughs* and *yokes*, to draw the government's attention to the issue of equal land rights for women.

The rallies carried out in the various districts had one common purpose, to guarantee equal rights for women over land. The chairperson of the Dalit Preservation Abhiyan Forum, in

Siraha, Ms. Rikma B.K., expressed her happiness over the formation of a high-level Land Reform Commission and added that the government should issue land certificates in the names of both husband and wife. She called for all land rights deprived people to have equal access over land.

In a patriarchal country like Nepal, it is fundamental that women have access to land for their empowerment which will bring security, independence and confidence, enabling women to become active in all social and political arenas.



Land deprived women on a plough and yoke procession in Siraha

Agitation and Conflict in Siraha

The land deprived people and squatters had been occupying barren land in a community forest in Rajaji Chure, Siraha for decades. Out of the blue, a team of police personnel led by the Chief Officer of the District Forest Office set fire to 84 huts belonging to the squatters and evicted them from the land they were occupying. These land deprived people staged a sit-in protest stating that the government evicted them from the land in an inhuman way and without any warning. In the process of evicting the squatters, police brutally beat women, children and the elderly. Hundreds were badly injured and some were left in a critical condition, including a 12 year old boy, Sanjeev Tamang, who lost his fingers during the eviction process.

As per the agreement made between the government of Nepal and the

National Land Rights Forum at the end of November's 13 day sit-in protest in Kathmandu, the land deprived people should not have been evicted from any land that they were currently occupying, until and unless, another provision is made. However, such duplicity and brutality on the part of government officials from the forestry department, and their police henchmen, have left these people in a dangerous and vulnerable position. One victim of the police violence, Shankar Sada, had this to say: "We are citizens of Nepal and have every right to live in our country. It is the duty of our government to ensure our right to a secure livelihood."

These land deprived people have nowhere to go. Human rights activists, women's activists and land deprived people have all shown solidarity for their ongoing sit-in protest.

Research on Land Tenure and Land Ownership in Nepal

CSRC is conducting a national level research programme on 'Land Tenure and Land Ownership in Nepal', with the objective of investigating existing formal and informal land tenure systems, legal provisions, and traditional production relations. The research will redefine new tenure arrangements and study other critical issues in contemporary Nepal. Furthermore, the research will explain the issues of land reform and land management in the context of transition to federalism and the Constitution writing process. Research outcomes will be interpreted based on

qualitative and quantitative information from household surveys and a variety of secondary sources. The findings of the research programme will be given to the high-level Land Reform Commission to help guide the new land reform strategy for the country.

The research is being conducted in 16 Village Development Committees within 16 districts from Nepal's three geographical areas. So far, the household surveys have been completed and are in the data entry phase, while qualitative information gathering is ongoing in the field.

Training for the Strengthening of People's Organisations was held in Kailali and Nawalparasi

4-day people's organisation training events were held in Tikapur of Kailali and Gaidakot of Nawalparasi. The main objective of the training was to analyse the current status of people's organisations and their strengths and weaknesses. Discussions were held among the participants to discover ways and processes which could improve the strength and mobility of the organisations in future. All the participants agreed to abide by the newly formed code of conduct.



People's organisation training held at Nawalparasi

2009 Publications

Land Politics and Conflict in Nepal: Realities and Potentials for Agrarian Transformation

Bishnu Raj Upreti, Sagar Raj Sharma, Jagat Basnet (*NCCR North South, CSRC, HNRSC/ KU 286pp*)

Providing a comprehensive background and analysis of landlessness and the land rights movement in Nepal, this new publication also includes a chapter on international land rights movements. Land is discussed in the context of power relations, social conflict, property rights, foreign aid and globalisation. Land based social exclusion is covered in depth with special focus on women, Dalits and agricultural bonded labour systems. The final chapters of the book debate transformative land reform and an holistic approach to the way forward.



*Available from
CSRC resource centres.*

Empowering the Disempowered Tenant Farmers: A Study of the Impact of People-centred Advocacy for Land Tenancy Rights in Nepal



*Available from
CSRC resource centres.*

Krishna Pathak, Nisha Tiwari Sharma, Laya Prasad Uprety (*CSRC 165pp*)

CSRC commissioned this study, with the support of independent evaluators, to produce empirical evidence on the impact of receiving land to the lives of tenant farmers. The study adopts a quantitative and qualitative approach to assess the land rights movement's effect and impact. Data was collected during extensive field research in 9 districts, carefully selected to represent various ecological and development zones. The study documents the learning and good practices established by the land rights movement at both community and national levels, recommending appropriate strategies for land reform in Nepal and improvements to the ongoing land rights movement.

2009 Publications

Land and Land Tenure Security in Nepal

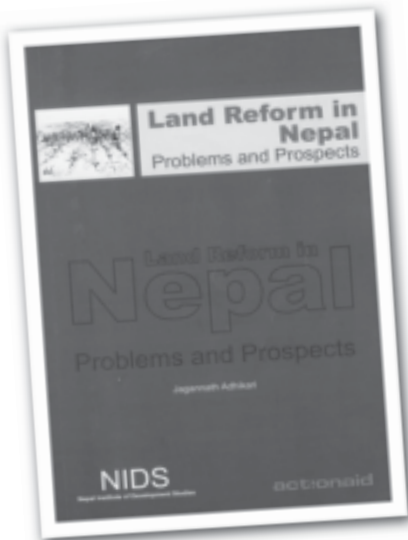
(CSRC and Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) 86pp)

Commissioned for ANGOC's Land Watch Asia campaign to facilitate information sharing and build consensus for policy dialogue regarding access to land, sustainable development and agrarian reform in the six participating countries (Bangladesh, Cambodia, India, Indonesia, Nepal and the Philippines). This country study details Nepal's historical and contemporary land issues and land tenure systems, including potential strategies for the future.



*Available from
CSRC resource centres.*

Land Reform in Nepal: Problems and Prospects



*Available from
NIDS, CSRC and ActionAid Nepal*

Jagannath Adhikari (*Nepal Institute of Development Studies (NIDS) and ActionAid 143pp*)

This book analyses Nepal's land reforms in their historical context and assesses the future prospects in terms of efficient policy formulation and implementation. It examines land reforms in other countries and discusses controversies, misconceptions and the roles of government and non-government agencies. The book argues that a broad concept of 'agrarian reform' is required and outlines the roles and responsibilities of the various stakeholders of agrarian reform programmes.