



*Land First*

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## Editorial

Arguably, one of the least reformed sectors of the Nepalese economy is its land market, which is also one of the biggest impediments in achieving growth. Recently, the High Level Scientific Land Reform Commission submitted a report to the government with its own assessment and recommendations for a land reform programme. It claims, for example, that some 1.4 million landless people across the country require 421,770 hectares of land to get rehabilitated. It asserts that there is some 492,851 hectares of government owned land that is not being used productively. This land can be efficiently used, it says, to enable 1.4 million squatters to enjoy access to land. It has suggested the division of the available unused lands for two basic purposes – agriculture and human settlement. It recommends the constitution of local level commissions for the implementation of these programmes, which would cost around Rs. 32.5 billion.

The government, on its part, ensured the effective implementation of the prescriptions made by the report and pointed out the need of collaborative efforts of all parties in order to facilitate the implementation. Both the parties have done their jobs. As always. This phenomenon has been all too familiar in Nepal. Formation of ‘high level’ commissions, submission of reports, and government’s ‘assurance’ of implementation of the recommendations. There is however hardly any political will or the boldness that is required for the actual implementation. The priorities lie somewhere else. The commission, on its part, can boast of having done its duty. It knows that there will be fewer people questioning its own reliability and more people blaming the government for inaction. Such is the politics of commissions in this country. It is high time that the government and the concerned parties showed some

sincerity towards the thousands of landless and hungry people of this nation.

The articles in this volume look at the issues of such landless people from different perspectives. We start with the experience of Japan, in which the author argues that land reform has to come as part of an integrated approach for achieving its goals. We assume it will be a very useful reference material for the policy makers of Nepal. Then there is an overview of the issues surrounding land reform in Nepal, written by someone who has been at the heart of this debate for many years. Another article provides a gender perspective on land ownership and argues that women’s ownership is crucially linked with their empowerment. The next article shows, through empirical findings, how ownership of land actually enhances productivity and livelihood security of the farmers. Yet another article argues for the socio-economic rights of the landless, and shows, through extensive literature review and field surveys, that there can be no real justice in Nepal without securing those rights. This is followed by two articles that argue for the need to produce educated and skilled human resources in the field of land administration and management. Finally, we end with a short essay on property rights, which is at the heart of the land reform debate in Nepal. It gives different schools of thought on the issue, and leaves it to the readers to make their own judgments.

In the last volume we had written that the Constitution drafting process was in its last phase. Unfortunately, we cannot say the same in this volume. The Constitution looks to have become more and more elusive as we prepare this volume, and yet again we have had to bear the cost of unhealthy politics. The struggle continues.

**The Editors**  
August 2010

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# Land Reform in Japan : Democratization, Social Inequality and Development

■ John Clammer\*

## Introduction

A number of scholars of development processes have noted that those Asian societies that successfully implemented land reform early in their modernization efforts, notably Japan, South Korea, Taiwan and, in a rather different political context, China, have all been amongst the high growth economies of the post-war era. Indeed, the first three listed are amongst the most successful of the Asian so-called “Tiger” economies. In each case, positive effects occurred in rural social structures and in both local and national political organization. By contrast, those Asian societies that failed to implement systematic land reform in their post-independence period have not seen anything like the same generalized development progress (measured by poverty reduction, rise in GNP and GDP, expansion of education and universal health care and access to communications). For example, Khilnani (1998) argues that India, a country that has failed to carry out systematic land reforms and redistribution except in exceptional cases such as Kerala and West Bengal, has preserved great inequalities in the social order, especially in the rural areas, that have led not only to

social friction, conflict and food shortages, but also to continuing poverty, population displacement and historically to famine. He sees the Indian development record as similar to that of the Philippines, one of the least successful growth economies in Southeast Asia (Khilnani, 1998, pp. 78-80).

This argument is I think largely correct, but taken by itself is too simplistic. If land reform alone was the formula for successful development we would have to hand a very simple model for poverty alleviation and the promotion of social justice. In reality, the situation is more complex, and I shall attempt to illustrate the more subtle connections between land reform and development through an examination of the Japanese case, which demonstrates very clearly both the positive benefits of systematic land reform and some of the longer term unexpected consequences on rural social structures and overall social inequality.

## Land Reform in Japan

In 1945, subsequent to the atomic bombings of Hiroshima and Nagasaki, Japan surrendered to the US-led Allied forces and World War II came to its end. The country was then occupied for the next

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three years by the Allied forces and civilian rule was gradually established under the guidance of the US dominated Allied military administration. One of the goals of this administration was to establish a US style democratic system to replace the Emperor-centred authoritarian/militaristic political system that had dominated the country since the 1920s. One of the keys to this was seen as the breaking up of the old pre-war rural landlord/tenant system and its replacement by a broad class of independent yeoman farmers. This policy must also be seen in its broader social context: in 1945 at the close of the war, Japan had a population of 72 million (now 125 million in 2010) of whom 50 percent lived in the countryside or in semi-rural conditions. Many of these rural dwellers owned little of the land that they cultivated, rent payments in kind averaged 60 percent of the crop, most were bound into highly paternalistic relationships with the landlords and few had any incentive to carry out technological interventions. The war itself had already severely disrupted many of these traditional attitudes and relationships, and the occupation forces (or at least the Americans amongst them) feared that substantial social instability and the spread of communism would jeopardize the newly established peace and the possibility of post-war economic reconstruction. Within months of the ending of the war, the Allied administration announced the kinds of reforms in land tenure and ownership that it wished to see, and the following year the newly reconstituted Japanese government under the premiership of Yoshida Shigeru passed a major land reform bill in October 1946.

This bill was radical in its scope. It authorized the government to compulsorily purchase for reasonable compensation all the land of absentee landlords and uncultivated rural land.

Landlords actually residing in the villages were permitted to rent back small amounts of land and were forced to reduce their own land holdings to a maximum of 12 hectares (29.6 acres) on the non-rice growing and dairy farming in the northern island of Hokkaido and just 3 hectares (7.4 acres) in the other three main islands of Japan. They were also allowed to have proper contracts with their tenants and to limit their rents to money payments of no more than 25 percent of the annual paddy crop and 15 percent of other field crops. The huge amount of land thus released from landlord control was purchased by the state and resold to the tenants with reasonable claim on the land (usually as the former cultivators) at low interest through 30 year mortgages. The subsequent land transfers were one of the biggest peaceful transfers of property in recent world history, and were widely popular and deemed to benefit far more people than they harmed. The transfers greatly altered both social and economic relationships in rural Japan: within two years the percentage of paddy land owned by the cultivator increased from 55.7 percent to 88.9 percent, and within three the percentage of tenant farmers who owned less than 10 percent of the land that they cultivated fell from 27 percent to just 5 percent. Immediately prior to the war 47 percent of all farmland was cultivated by tenant farmers, but by 1949 this figure was reduced to just 13 percent. The rapid inflation of the late 1940s also reduced the real cost of the 30 year mortgages, making repayment significantly easier (Kodansha, 1993, pp. 877).

It is widely accepted amongst scholars of modern Japanese history and its development path that the 1946 land reforms laid the basis for the peaceful transition from a war economy (and

subsequently a devastated defeat economy) to the high growth economy that began to take off from the 1960s and continues, albeit with hiccups, to the present day. But a detailed study of the subsequent outcomes of the land reforms shows a complex picture. Not all of it is positive and it is to this subsequent history that we must now turn. The high inflation of the 1940s, while it reduced the real costs of mortgages to the new owner-occupiers, also greatly reduced the value of compensation to the landlord class amounting effectively to the state expropriation of absentee landlords. And while former tenants now acquired the land they had formerly worked at exorbitant rents, almost all farms remained small and in many cases owners ended up with widely scattered plots of land, making consolidation into economically efficient larger holdings difficult. Such a situation, however, promoted the formation of various forms of agricultural cooperatives, a feature very much part of the rural economy even today. At the same time, possession of land increased productivity, especially in rice cultivation, at a time when the Japanese population was beginning to grow, urbanization was increasing apace, and when there was a worldwide food shortage.

Many of the effects of land reform were thus directly economic. Others, as might be expected, were sociological as the land reforms of 1946 greatly impacted the rural social structure of Japan. It must be remembered, land reform took place in a wider socio-political context in which rural-urban migration and a government policy emphasis on industrialization were amongst the most important factors. These affected the relative value of agricultural products, the attractiveness of urban life and regular salaried employment over the uncertainties and hardships of farming,

and the distribution of national resources by economic sector. The structure of landholding and the structures of social relationships and of kinship are greatly intertwined. In pre-war Japan, the rural social structure could be understood as a hierarchy of landlords, independent cultivators, tenants and landless labourers and various combinations of these (landlords who were also cultivators, independent farmers who also rented out a portion of their land and so on). These economic statuses were also sociological categories. Traditionally the system of land tenure was mostly confined to a given hamlet, with landlords only renting to members of the local community. Members of a hamlet were tied to each other by ties of kinship, cooperation in rice planting and harvesting, thatching of each other's houses, and communal maintenance of the local irrigation system. During the pre-modern Tokugawa period (1603-1868), there were feudal prohibitions on land sales, but with the advent of the period of modernization in Japan beginning with the accession of the Meiji Emperor to political rather than merely symbolic power in 1868, these restrictions were lifted. As a result, concentration of land in the hands of landlords quickened. Since such land was often in neighbouring hamlets, the tenants too were often forced to rent land in hamlets other than their own. Both landlords and tenants began to be concerned with issues such as the irrigation systems and total ecology of much larger areas that impacted their own localized farming activities. As a result, the social horizons of the peasantry were already widening well before the war, a process hastened by the fact that military conscription was focused on the countryside, it being believed since the Meiji period that rural youth were healthier, stronger and more amenable to discipline

than the urban youth. For this reason, the countryside had provided the bulk of the pre-war army and many rural people thus found themselves in Manchuria, Korea, Taiwan or China for extended periods of military service. Likewise, by no means all rural occupations were in farming as such - small retailers, barbershops, druggists, rural banks, the offices of agricultural cooperatives, garages, transport companies and so forth as well as small scale industries, all infested the countryside. Already in 1935, 25 percent of farmers or members of their households had off-farm occupations; by 1955 only 35 percent of Japanese farmers earned their entire income from farming alone. Sociologically of great significance however was the breaking up of traditional landlord-tenant relationships. While formally this was a relationship of benevolence on the part of the landlord based on a ritual kinship relationship (especially in the *dozoku* system of north-eastern Japan and the *oyakata-kokata* relationships found in central Japan) and implied a relationship of reciprocity, the possibilities of real exploitation by landlords of tenants was very pronounced, with rents amounting to more than 60 percent of the annual crop (for a detailed description of rural social structures and kinship patterns, see Befu, 1981, pp. 67-94).

The significance of land reform in Japan needs also to be seen in the context of the broader ecology of the country. Only 12 percent of the Japanese land area is under cultivation, the rest divided between the mountains that dominate the interiors of the four main islands, and the extensive urbanized areas. Nevertheless, intensive wet-rice cultivation and double-cropping in the zones where this is climatically viable have allowed Japan to support a dense population. It is estimated that despite the

small sizes of farms and individual fields – the average farm except in Hokkaido being one hectare or approximately two and a half acres – rice yields per acre in Japan on average are between two and four times those of Southeast Asia and South Asia respectively. Only about 8 percent of the Japanese currently live in farming households and of those only about a quarter rely entirely on farming as their means of livelihood. This fact means that we must examine land reform in a bigger policy context – relating it to other political and economic reforms of the Occupation period and after, as well as to the broader intentions behind the land reform policy.

The US-led Occupation administration believed, despite historical evidence to the contrary, that the evils of Japanese imperialism had been stimulated principally by the large concentrations of wealth and power in the hands of large landowners and more especially in the hands of the *Zaibatsu* of industrial combines that had embarked on an aggressive policy of overseas expansion. The initial Occupation policy was, paradoxically, given its rising fear of international communism, virtually a Marxist one. It tried to break up large landholdings, dismantle the pre-war *Zaibatsu* and dispossess the families which owned and controlled them. Within less than three years however, the emphasis was reversed, partly for strategic reasons. With the success of communism in China and the outbreak of the Korean War, Japan suddenly became not an enemy, but a forward base for the West to protect itself against this new “menace”. Emphasis consequently shifted to the revival of Japanese industry, partly to supply materials for the US defence policy in the Far East and partly with the intention of stabilizing and “normalizing” Japan by a new concentration on economic growth as the



new national goal. Agriculture could clearly not absorb the large numbers troops returning from the war, nor could it alone address the problems of poverty, the destruction of the major cities and the again expanding post-war population in Japan, suddenly recast as a western ally.

The land reform process was thus part of a much larger democratizing project (one which indeed grew so fast that it began to alarm the Occupation authorities who had unleashed these reforms) that included encouraging union organization, full political and legal enfranchisement of women, the abolition of the semi-feudal authority of main families over their branches and the expansion of compulsory education to nine years, as well as the new encouragement of industrialization. These reforms had a huge range of sociological effects that cannot be explored here, including the creation of what is now a major feature of the Japanese social landscape—the “salaryman” or salaried company worker class with its largely middle-class and property owning instincts, the liberation of women into the workforce, the creation of many off-farm employment opportunities for rural families, and the emphasis on education that has played such a large part in the post-war economic “miracle” in Japan.

But what about the effects of these broader policy innovations on landownership and management and their long term implications for the rural sector in Japan? Here we must agree that agricultural policy must be seen in the light of much wider policy changes and processes of social change. Certainly the land reform policy was a major contributor to reducing the intensity of distributive struggles and today, although income differentials are beginning to widen again, Japan is by relative standards one of the most

egalitarian and harmonious societies in the world. But the empirical evidence points to the fact that much of the post-war redistribution of wealth, particularly as a result of land reform, took place in the very early years of the Occupation before economic growth began. Since then, new problems and forms of inequality have emerged, including hyper-urbanization and very high urban density figures, and massive wealth inequalities between those who owned land and property (especially urban land) before the high growth and benefited enormously from the rapid inflation of land prices and those who did not and subsequently could never afford to enter the land or property markets. While worker incomes increased approximately thirteen-fold between 1960 and 1990, urban land prices increased twenty-eight fold. At the same time, while urban expansion (between 1950-1965 alone the Greater Tokyo region grew in population by 56 percent, the Hanshin area (Osaka and Kobe environs) by 43 percent and the Tokai region including the major car manufacturing district of Nagoya and adjacent towns by 27 percent) enriched some farmers in suburban areas and areas of new industrial expansion through sale of land at greatly inflated prices, few farmers deeper in the countryside benefitted directly from these social changes. In fact many faced the problem of declining labour as younger people left the county side to join the migration to the towns and cities.

### Land Reform in Context

The Land Reforms of 1946 had a major impact on post-war Japanese society: they radically changed patterns of rural land ownership, abolished absentee landlordism, promoted agricultural productivity and were conducive to the new policy of democratization by

effectively creating a new class of owner-cultivators with real ties to their land and local communities. Immediate post-war Japanese rural society was itself a rather strange state of uncertain transition, triggered not only by the impoverishing effects of the war itself and its demographic effects on the rural male population, but also by pre-war trends that rapidly intensified after the war. Primary amongst these was the development of a commodity economy which had undermined traditional paternalistic relationships between landlords and tenants by encouraging landlords to demand a high and uniform rice quality and uniform sack measures, and to reject as rent rice that did not meet these standards (Kawamura, 1994, pp. 22-23). Subsequent post-war development of the commodity economy and the demand for consumer goods that it fuelled also had direct effects on farmers and their families, driving many into off-farm employment in order to generate sufficient cash income to meet their new desires. The Land Reform was a major factor in promoting social harmony. On this line, Shirota (1982) has showed that disputes between tenants and landlords were common in the interwar years (between 1918-1945) and rose rapidly in number and intensity with peaks in 1936 and in 1937 when 6,804 and 6,170 disputes were recorded involving over 140,000 tenants and over 40,000 landlords. The image of a happy and harmonious countryside in pre-war Japan was a myth: it represented rather a major site of conflict, largely occasioned by the major social changes taking place outside of, but having a major impact on, the countryside.

These changes include the rapid development of industry and the decline in the rural population through rural-urban migration. In the 1950s it was expected that a major problem in post-war Japan

would be rural over-population. Few seem to have foreseen the remarkable level and quality of growth and its attendant urbanization that began to take off from the late 1950s and early 1960s, leading as we have suggested above to movement of populations from the countryside, rapid urbanization, the massive expansion of off-farm employment and the domination of a consumer economy, along with the cultural characteristics that go with it. With the national emphasis moving from agriculture to industry, economic development was no longer concentrated in agriculture. So while the 1946 Reform did indeed create the conditions necessary for the emergence of an independent class of owner-cultivators, these same people were then almost immediately swamped by major changes taking place elsewhere in the society. In order to address this, the Reforms were supplemented in 1961 by the passing of the Basic Agriculture Law designed to ensure efficiency, dignity and autonomy of the agricultural sector. The problem with the Structural Improvement Program implemented by the Act however was that it did not sufficiently take into consideration the actual sociological and economic conditions under which small farmers in particular were labouring. Considerable hardship was being experienced by the small farmers attempting to make the transition from farming to urban and/or industrial occupations and the big lifestyle changes that such a transition implied. Huge sociological shifts were experienced by the rural sector as the high growth years got under way: between 1950 and 1980 the number of farm households in Japan decreased from 6,176,000 to 4,661,000 and the ratio of agricultural workers (which in the Japanese census includes forestry and fisheries) in the workforce declined from 44.6 percent to just 9.8 percent and has continued to drop

subsequently. In the same period approximately one million small farmers cultivating land of less than one hectare abandoned farming altogether. The only farmers who seemed to be flourishing (outside of the non-rice growing island of Hokkaido) were those farming more than 2.5 hectares and it is estimated that by 1980 only about 4 percent of Japanese farmers had really favourable conditions for the development of efficient farming – only 187,000 households out of a total of 4,496,000 – and even these had little possibility of expansion through the purchase or lease of land from smaller farmers (Ministry of Agriculture, 1982). This is not only a question of efficiency: political and social power in the rural areas has passed from the landlord class to the new class of affluent and more mechanized larger farmers and to timber land owners, as forest land was not subject to the reforms of 1946. This means that in mountain village communities, the pre-war power structure was left largely unchanged and where it was modified was not through the empowerment of tenant farmers, but by the moving into the area of store owners and other representatives of the new consumer society (Kawamura, 1994, pp. 117). Land reform thus triggered a whole set of new forces and while it did much to overcome the old and very real inequalities of Japanese rural society, it created in its wake other problems. For example, in his detailed study of a single village and its transformation from 1951 to 1975 under the impact of both the land reforms and the subsequent industrialization of Japan, anthropologist Robert J. Smith traces the effects of the reforms on different social strata in the hamlet. As he points out, while many, probably most, local farmers benefitted substantially from the reforms, the hardest hit by the reforms were small- and medium-sized landowners “who

were left with holdings just large enough to tie them to the land, but inadequate to provide them a living from full-time agriculture” and the former tenants, “who did not acquire enough land even to tempt them to try full-time farming, [who] sold out and moved to the city” (Smith, 1978, pp. 95). Many of the long-term social effects of 1946 consequently still remain, working their way out through the lives of the post-war generation. But very importantly it must be recognized that the success and failures of the land reform were dependent not only on the coherence of the policy itself and its sensitivity to actual sociological conditions in post-war Japan, but also to industrial policy and other seemingly unrelated factors that have had profound subsequent impact on the rural sector and its viability.

### **Land and Lifestyle in Contemporary Japan**

In this paper I have attempted to trace the nature and consequences of the highly significant Land Reforms of 1946, which was initiated by the Occupation authorities but passed into law by a newly constituted democratic Japanese legislature, and which radically transformed the land ownership patterns and power and social structures of the country. The Land Reforms of 1946 are also widely credited with bringing about one of the largest non-violent land transfers in history and laying the basis for the peaceful, largely egalitarian and democratic society that post-war Japan has indeed become. This is not however the end of the story. The tensions between the agricultural sector and continuing government emphasis on industry, high technology, IT and services as the basis for the largely export-led economy continue, and in many ways agriculture is still an embattled and a politically sensitive sector as Japan's largely conservative post-

war governments have traditionally looked to the rural sector as their vote-bank, and because Japan is highly dependent on food imports and is very far indeed from food self-sufficiency.

At the same time, within Japanese urban society there is a growing kind of rural nostalgia, some of it simply romantic and in many ways simply a response to the 18<sup>th</sup> and 19<sup>th</sup> century theories of the naturalness, simplicity and rootedness of the Japanese countryside, seen as the source of all really sound values (e.g. Gluck, 1985) and reflected in the contemporary *furusato* movement, or desire to locate and visit one's ancestral rural place, and to somehow find sociological roots, or at least interesting culture, handicrafts and foods, there. But at other levels there is a serious interest among a significant populace, partly fuelled by the burn-out of high intensity urban living, to abandon urban life for farming. This is partly due to the recent food scares (contaminated foods imported from China and local processors mislabelling and selling foods well past their "eat by" dates) that together with health concerns has led to a rapid increase in organic farming and to personal relationships between urban consumers and the actual growers of their food stuffs, often purchased through direct marketing or consumer cooperatives. Likewise, a growing awareness of environmentalism is stimulating a rapidly growing interest in ecology, natural farming, the role of forests and hostility to pollution and environmental destruction. A number of new social movements often derived from one of Japan's so-called "new religions" (mostly post-war religious movements based on either Buddhism or the indigenous and very nature-oriented religion of Shinto) have popularized new

forms of environmentally conscious farming and communal living, and agricultural and consumer cooperatives specializing in the distribution of organic foods continue to flourish. The present moment is an interesting time to study the evolving relationships between people, society, politics and land in Japan, a process that has changed throughout Japanese history, but which was given its possibly the biggest boost by the radical reforms of immediate post-war Japan, the effects of which continue to be felt throughout the social system of the Japanese countryside and beyond.

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# Land Reform in Nepal

■ Keshab Badal\*

In Nepal, land is the main source of production while farmers are the main producers. Feudalistic exploitation and various forms of discrimination that hinder social justice and equitable growth are still prevalent in the country. It is thus very important for Nepal to create a base for an overall economic and agricultural growth by ending the feudalistic land ownership system.

Nepal started experimenting with capitalistic growth some six decades ago but the pace of that desired growth has been very slow. Even today, 25 percent of the population is landless while 65 percent of the population is active in agriculture, and while the contribution of agriculture sector to GDP is significant, the size of the agriculture labour force is diminishing. All this explains, to a certain extent, the causes for the slow pace of growth in Nepal.

Traditional and primitive forms of production are still widely prevalent in agriculture. In most of the places, the tools used for production are still very traditional and old fashioned. Even the production management is traditional. Except for 15, 68, and 17 percent of areas respectively in the mountain, mid-hill and Tarai regions,

other areas have not been able to use modern tools and techniques for agricultural development. In many places, even the land owner farmers have not been able to use modern facilities such as electricity, irrigation, transportation, and market.

Majority of the farmers in Nepal are still using traditional production tools such as buffalo ploughs, spuds, spades and hand woven baskets. There exists a huge chunk of landless and marginalized farmers in the mountain, hill and Tarai regions, who are forced to lead their lives under the suppression of landlords who give them cheap wages and high interest rates, and exploit them as *Haliyas*, *Kamaiyas*, *Haruwās* and *Charuwās*. Tenants who have been serving their masters for years are still deprived from the tenancy rights. Age long problems of farmers surviving on *Guthi* and *Birta* lands remain still unsolved. *Dalits*, who consist of over 13 percent of the population of Nepal, are still being discriminated against in various forms. Inhumane practices such as untouchability based on caste system still exist in the 21<sup>st</sup> century. Women, who comprise of 50 percent of the population, are still being discriminated against. Of the total land

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\* Mr. Badal is a politburo member of the United Marxist Leninist Party of Nepal and was the Chairperson of the Badal High Level Land Reform Commission in 1995.

registration in the country, women's ownership accounts for less than 10 percent. That is one of the reasons why women are prone to various persecutions and discriminations in the society.

There are approximately one million landless households living under wretched conditions all over Nepal. They are living with very low wages, and are being exploited as *Haliyas*, *Haruwas*, and *Charuwas*. Even among the landless, *Dalits* and the marginalized communities are the worst affected ones and their problems are very severe.

It is extremely difficult for the marginalised farmers to sustain their livelihoods on small landholdings in the absence of basic infrastructural development. The rate of return is very minimal despite their continuous hard work. Declining productivity of their lands and abject poverty have made their lives really extremely insecure. The only way out from these circumstances is a truly revolutionary agricultural transformation. Even the middle class farmers who own land are not enthusiastic about agriculture and farming any more. They are very uncertain and insecure about their livelihood options, employment opportunities and the future of their families. There is uncertainty all around. But why is this happening?

Through the available means of mass communication and media, even the poor and rural people get to see, read and hear about the better living conditions of more developed places from both within and outside Nepal. This has made them more aware of their wretched conditions and the need to do something to improve their livelihoods. It is thus important that we urgently come up with plans to revolutionize agricultural development and bring about social justice. Revolution in

agriculture is necessary also to address the declining enthusiasm among the farmers, develop the required infrastructure, improve the access of landless people to productive resources, and modernize means of production.

Increasing agricultural productivity will not be possible without bringing back the enthusiasm and confidence in the farmers. Revolutionary transformation is imperative to increase the access of the landless to land and build confidence amongst the farmers regarding agriculture and farming. All the active farmers need to feel secure about their future. This will have to be the main objective of any agricultural revolution. Without increasing agricultural productivity and purchasing power of farmers, non-agricultural sector alone cannot bring about meaningful development in this country. Agriculture is the spinal cord of the national economy, and without its growth overall development will not be possible.

### **What is Revolutionary Land Reform?**

In the context of Nepal, revolutionary land reform means to ensure the access of the poor farmers to land resources, ascertain the tenancy rights of the tenant farmers, give access of the trust land to the farmers who till such land, ensure land ownership to both men and women, implement just land use policies, and prohibit further land fragmentation.

Effective utilization of rain and underground water for small for medium and large irrigation projects is another aspect of revolutionary land reform. The five main uses of water, that is, water for drinking, irrigation, generating electricity, fish culture and recreational activities, need to be integrated in a scientific and holistic

manner. It is equally important to build reliable transportation and communication networks and take them to the sources of production. Developing cooperative networks to bring together the farmers and their resources and skills at one place such that they get a platform to move forward is also vital. Revolutionary land reform should include programmes that include all these aspects.

### **Diminishing Agricultural Labour Force**

Continuous failure of the state to provide conducive environment to the farmers, both small and large, has resulted in a general revulsion against agriculture. A large chunk of labour force is moving away from this sector. This trend of diminishing labour force is not a good signal for the development of this country. Unless Nepal moves towards becoming self-reliant in agriculture, it will very likely face national crisis soon.

It is absolutely important that we become self-reliant in agricultural production. Of course we can also increase the volume of imports and exports of other goods, but keeping in mind the possibilities of blockades, we have no alternative but to become self-reliant in agriculture. For this to happen, revolutionary land reform has to go hand in hand with revolutionary agricultural reform.

Nepal is a country known for its diversities. Although the total area is only 1,87,181 sq.km, Nepal can boast of climatic variations ranging from the mountains to the flat lands. The geographic diversity begins from 73 meters and goes up till 8848 meters above the sea level. Cultural diversities are equally prominent where people from different ethnic groups, religions and cultures live together. Unity

amongst these diversities can be a valuable asset of our country, while failure to unite for national causes may bring fatal negative impacts. For this reason too, scientific land reform is very important.

### **Emphasis on Forest Conservation**

In Nepal, the area of land covered with forests is two times more than that of the land used for agriculture. Forest conservation should indeed be our first priority as forests are reliable sources of edible fruits and fodders for animals, while they also preserve water sources and conserve green environment. We need to manage and conserve our forests effectively and scientifically. Trees such as *sal* and *eucalyptus*, which do not allow other plants to grow around them, should be planted on lands unsuitable for other agricultural production. This will also enhance livestock rearing, which in turn can lead to production of organic fertilizers and bio-gas development. Growing trees will also help in reducing global warming. Nepal can also benefit from carbon trade, apart from benefiting from increased employment generation from agricultural activities. Besides, it also helps in maintaining quality and fertility of soil.

### **Land Use in Non-agricultural Sectors**

Land is used not merely for agricultural purposes, but also for construction of physical infrastructure such as buildings, roadways, public facilities, industries, commercial complexes, play grounds, hospitals and so on. But which type of land should be used for such purposes? Precise policies regarding land resource utilization for non-agricultural purposes should be formulated by the state. There will be dire consequences if agricultural

and fertile lands continue to be used for non-agricultural and non-productive sectors. The state should be firm on these issues, and should come up with an integrated approach that will lead to sustainable development. We cannot risk the future for petty gains of today. In this regard, a lot can be learnt from the experiences of Vietnam (Badal, 2009).

The issue of scientific land management or revolutionary land reform is not a matter confined only to the communist parties. In Europe, successive capitalistic governments played very crucial roles in ending feudal land ownership and speeding up the process of overall development. In Japan, Korea and Taiwan, revolutionary land reform became possible under the leadership of non-communist parties and governments. The issue of ending feudalism and bringing land to the reach of the landless is universal and should be a matter of concern for all the parties, irrespective of their political and ideological orientations. Revolutionary land reform is crucial not only for capital formation and development, but also for mitigating social conflicts that arise due to injustice, inequality and inequality.

### Finally

There are many who think that revolutionary land reform is concerned only with the distribution of land to the landless. That is not true. Revolutionary land reform is a programme that will make possible increased agricultural productivity that will in turn bring about equitable social justice. It is not merely an issue of land distribution. There are many who ignore these issues and ask questions like “where is there land for distribution?” thereby overlooking the pains of thousands of landless people. Ensuring access to land of landless people does not merely mean distributing land

above the fixed ceilings among the landless, but it is also an obligation of the state to provide land as a means of livelihood for those who have no alternative options. Land is different from other forms of properties. Land is a renewable resource but its area is fixed and cannot be expanded, whereas other properties can be extended and expanded. Land cannot be understood and analysed from the same perspective of other forms of properties.

Some argue that it is now time for industrial development and employment creation rather than distributing land. But such views indicate ignorance and attempt to shy away from being responsible. Such view is an interpretation of the rich people who do not have to worry about their day-to-day livelihoods. There are also some politicians and experts who claim that land reform is merely a scheme to grab land from Tarai, which again is quite incorrect understanding. According to the land reform policy of 1964, ceiling on land holdings was made differently in different geographical regions, i.e. 17 ha in Tarai, 4 ha in the hills and 2.5 ha in Kathmandu. This was one of the reasons for increasing number of landless people in Tarai, as land became confined to limited individuals. Moreover, the then *Panchayati* government did not address the problems of local landless farmers. Also, only limited amount of land was confiscated through the programme, and even that land could not be properly distributed.

It is clearly stated in the report of the High Level Land Reform Commission formed in 1995 (Badal Commission, 1995) that while distributing land, priority should be given to the landless households of the village from where the excess land is acquired. Particular attention should be given to the landless *Dalits*, *Kamaiyas*, *Haliyas* and minorities. Only if there



remains excess land, it should be distributed to the people in the neighbouring villages. At present, the labour force from thousands of landless families is not being utilized in effective manner. Revolutionary land reform can aid in this regards and make ways for utilizing available human resources for increasing productivity of agricultural as well as growth of non-agricultural sectors. That way it can also strengthen the new democratic system in the country. Democracy can sustain only if it works for all. Economic democracy is indispensable for sustaining and strengthening political democracy.

Land reform played a key role in the development of countries such as Japan, Korea, Vietnam and Taiwan. In these countries, neither centralized governments nor feudalistic management of land could bring about the desired development. The development process accelerated only after making land available to the farmers and poor landless workers (Lee, 1993; Nishida, 1983; Takahashi, 1993). That resulted in increased productivity and growth in the agricultural sector, which in turn initiated the growth in non- agricultural sector. Nepal should learn from the experiences of these countries.

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# Gender Issues in Agriculture and Land

■ Maina Dhital\*

## Background

According to the Human Development Report 2009, Nepal ranks 144<sup>th</sup> out of 177 countries in the world with 0.553 as its aggregate human development index (HDI). The same report tells us that it is one of the poorest countries in the world with US \$367 per capita GDP. At the same time, 31 percent of the total population is below poverty line, where the gap of poverty based on gender, region and ethnicity is wider (UNDP, 2009).

Women constitute approximately 50 percent of the total population of Nepal (CBS, 2001). Although women's literacy rate is gradually increasing, it is still very low. According to the Nepal Human Development Report 2009, only 54.5 percent of the women are literate against the 81 percent of male, while the life expectancy of women is 61.5 years against 60.5 years of men (it's been only a couple of years that women's life expectancy has been longer than that of men). The same report stipulates that the gender development index (GDI) of Nepali women is 106 with the GDI value of 0.551.

Agriculture is the backbone of the Nepal's economy with the domination of human

labour force. It is the main source of livelihood for the majority of the population. Almost 65 percent of the total population is actively engaged in agriculture while 80 percent is associated with agriculture in some form or another. It contributes 33 percent to the national Gross Domestic Product (GDP) (MoAC, 2005), while the labour force involved in this sector contributes about 50 to 60 percent in the total production cost. Women contribute 55 to 85 percent of the total labour forces in this sector. Although women work 11 hours a day on an average compared to men's 7 hours a day (Kattel, 2005), their contribution hasn't yet been fully recognized.

Further, the increasing rate of migration of rural men has led to feminization of the agriculture sector, swiftly transferring a greater responsibility to them. However, their contribution in agriculture is not recognized as they don't possess legal entitlements over means of production, especially land. Moreover, compared to men, women have much less access to essential productive resources such as land, irrigation, agricultural technology and extension services, less education and training, and fewer financial resources like credit (Villarreal, 2008). Women make up

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over half the agriculture labour force yet they are frequently subject to discrimination, poverty and hunger.

More than half of the world's food is grown by women. They have traditionally played a major role in the world's agricultural production system. In Asia, they perform over 50 percent of the labour involved in intensive rice cultivation. In Southeast Asia and the Pacific, their home gardens represent some of the most complex agricultural systems known. They hold vast knowledge in sustainable agriculture system and play a key role in preserving and exploiting biodiversity. They are not merely a source of food but also a source of identity and skills that have enriched our social and cultural life (Bhusal, 2008).

Rural women in developed countries are directly involved in the management of natural resources and environment where they have right to control over these resources. However, Nepali women are not provided that kind of right. Women are fully dependent on natural resources like forest, land and water, in order to manage foods and shelters for the family and livestock. In such a situation, it is obvious that the waning natural ecosystem affects the situation of rural women, as the issues of agriculture production, environment conservation and women are inter-related.

Women are involved in both formal and informal sectors of the economy, but their contribution is not regarded productive. As some of the agricultural activities are not calculated in monetary terms, many girls and women are heavily involved in unpaid works. Like many countries in the world, the employment of agriculture labourers in Nepal is also seasonal or daily wage based. They don't get benefits of social security, nor do they get paid, sick

or maternal leaves. Even the genuine rural agriculture labourers who are permanent workers are not provided such facilities. While compared to labourers in urban areas, the labourers in rural areas have less wages and more working hours.

### **Gender Perspective in Periodic Plans**

It took more than 30 years for the conceptualization and formal recognition of women's role in agriculture sector since the inception of the first periodic development plan in the 1950s. Concrete initiative of women's inclusion was conceptualized only from the 6<sup>th</sup> periodic plan (1980-85). The plan stipulated to conduct additional programs in order to increase the participation of women in agriculture development.

The 7<sup>th</sup> periodic plan (1985-1990) recognized the need to have women-focused programs and introduced a minimum standard of at least 10 percent of women's participation in agriculture related trainings. Similarly, the 8<sup>th</sup> plan (1992-97) focused on expanding women's participation in farmer's groups, technical trainings, and access to credit. During this plan, Women Farmers' Division was established under the Ministry of Agriculture and Cooperative (MoAC). A five-year strategic plan for women farmers' development was also prepared during the same period.

The significance of the gender roles was further promoted in the 9<sup>th</sup> plan (1997-2002) when gender mainstreaming programmes were initiated. The Women Farmers' Division, which was established in the 8<sup>th</sup> plan, was expanded and renamed as Gender Equity and Environment Division. Consequently, the plan brought an additional agenda of cooperative development and preparation of gender

responsive plans and budgets. A minimum of 35 percent of women's participation was also mandated in all agriculture related programs.

The 10<sup>th</sup> plan (2002-2006) unveiled further programmes related to mainstreaming of women and gender issues in agriculture sector development. This plan also included women in the mainstream agriculture and livestock extension programs along with conducting targeted programmes after field based trainings to women and other backward farmers with the aim of improving their living standards. It also mentioned that women's participation would be encouraged in market management and operation.

Realizing the challenge to empower women including other marginalized communities, the ongoing Three-Year Interim Plan (TYIP) has adopted some strategies to orient them towards self employment by launching rural agriculture employment programmes. The TYIP has also stipulated plans for providing agriculture credit to the poor and the excluded groups at minimal interest rates. It also proposes to decentralize agriculture research to the working levels in order to establish sovereignty of farmers, particularly the poor and the women, by ensuring their access to decision making process in the selection of subjects for agriculture research implementation and evaluation.

However, adequate budget was never allocated to meet the spirit of these periodic plans and programmes. Although the government recognized gender responsive budget under the national budget in FY 2006/07 and has been allocating certain percent of the total budget (17.30 % in the current fiscal year) that benefits women directly, MoAC lacks

the necessary funds to mainstream gender for agriculture development. Programmes are running with zero budget under the Gender Equity and Environment Division within the MoAC. Although the budget allocation under MoAC has been increased (Rs 5.91 billion in FY 2008/09 to Rs 8.6 billion in FY 2009/10) since the last few years, the budget doesn't match the vision and plans from the gender perspective. It is silent on how to enhance women's strategic positions through recognizing them as independent and autonomous farmers, ensuring women's access to means of production, enhancing their leadership competence and so on.

### **Some Significant Achievements**

Despite these drawbacks, some positive initiatives have been taken from the government level. Like most of the countries in the world, women's role in the agriculture sector of Nepal is also going through gradual transformation. In Nepal, average achievement of women's participation and representation in agriculture development by the end of the 9<sup>th</sup> plan was recorded at 38-40 percent. A roster of the best entrepreneurs prepared by MoAC (2005) shows that there are 14 to 30 women-led enterprises functioning in different districts. Likewise, various farmers' organizations and the national federation of cooperatives of Nepal have adopted some innovative approaches to promote women's leadership initiatives. Besides, the major policies and programs in this sector have also set some gender specific objectives. For instance, the Agriculture Perspective Plan of 1995 aims to improve women's participation in enhancing agricultural productivity, while the National Agricultural Policy, 2004 intends to involve 50 percent of women in all possible programs. Likewise, Article

20 of the Interim Constitution of Nepal (2006), under its fundamental rights, has mentioned that no discrimination based on gender shall be tolerated and that equal rights are given to both the sons and daughters on ancestral property. Agro-business Promotion Policy (2006) has provisioned special programmes to support enterprises established and promoted by women, *Dalits*, and the poor.

Besides, a significant change in women's ownership in land has been seen in the recent years. That has been possible mainly because of the government's encouraging policy to register land in the name of women. Until a few years back, there was a complete male domination in land ownership. The census report of 2001 shows that the ownership of women in land was only about 10 percent in that year. However, by February 2009, 35 percent of land transaction was registered in the name of women, according to the transaction records of 50 land revenue offices throughout the country.

### Issues Ahead

Increment of women's ownership of land will increase their decision making power and self-dependency. It also means that women would be free from domestic violence and negative stigma. Most of the women who don't have ownership of property usually worry about old age, especially about getting proper respect and care from their sons and daughters in laws. Most of the women who enjoy the ownership rights are from rich and urban families. Rural women are still fighting for equal land rights.

Rural livelihood in Nepal highly depends on natural resources where land plays a vital role. Land has been the most crucial factor from a very long time in having incomparable influence in the structure of

a rural society. Peasants work hard in the field. They work throughout all seasons and make the land fertile and green. The vast majority of toiling peasants comprising of landless, marginal farmers, sharecroppers and agricultural workers produce food for everybody else, but they do not get their own basic human rights - right to feed themselves - fulfilled. Although women's rights are ensured in the Constitution, they still don't have access to and control over land, credit, and education in practice. Even when working as agricultural labourers, women receive less than half the wages given to men, despite the workload of both being equal. They also do not have decision making roles in choosing the crops and cropping pattern. Therefore, it is of utmost importance that the different constraints faced by women due to limited access to financial resources, knowledge and skills to deal with market, weak family support system and inadequate conducive policy provisions are dealt with sincerely.

The productivity of female labourers needs to be amplified for the growth of agriculture productivity. While making investment for the production and the productivity of agriculture, female farmers should be put at the centre. Also, the formulation and implementation of policies and programs related to agriculture development should be based on gender approach. Special programmes need to be conducted to increase women's ownership of land and other properties. While entering the name in the land purchase document, the names of both the husband and the wife should be mentioned. While distributing land to the landless people, the ownership should be provided to women too. Until they get access to land ownership, they will remain in the trap of the poverty. It is believed that the feminization of agriculture has

adversely affected to the productivity and food security of rural households. The Millennium Development Goals (MDG) Report 2005 also indicates that the incidence of poverty and insecurity is higher in women-headed families.

The Interim Constitution 2007, Part 3 (Section 18) under the fundamental rights mentions, "...every citizen has right to food sovereignty as mentioned by law." Likewise, the Constitution (Part 4, Section 35) under the state's policy states: "The State shall, by encouraging peasants and by increasing productivity, create conditions for economic progress of the majority of the people who are dependent on agriculture, and by launching land reform program, develop the agricultural sector as an industry." Although these two provisions are important for right to food and right to farmers, especially female farmers, they lack clarity and are technically incomplete. Hence, it is necessary to amend them and make them clearer and complete.

Nepal is in a new mode of political, social and economic transformation. The country is drafting a new Constitution where every section of the society is trying to include its rights in it. In this context, it needs to ensure women's access to and control over productive resources and promote and empower women peasants through cooperatives. Women's access to and control over natural resources, especially land, is vital as it symbolizes status and power in the society. Likewise, joint ownership of land is essential to promote welfare and freedom of women.

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The new Constitution needs to incorporate the following issues in its preamble:

I) Historic context of denying women the access to and control over land, II) importance of land as being one of the fundamental assets that determines women's identity, status and power, and its potential as an entry point for women's empowerment, III) national context of importance of land and its production relation, food sovereignty, increasing trend of feminization of agriculture, and IV) international context of globalization and resource concentration, mobilization, investment opportunities, climate change, economic instability and diversion of priority for development assistance, and the need to make land based interventions for social, economic and cultural transformation.

The preamble then needs to be supported by policy provisions to ensure equal rights for women and other minorities over natural resources, especially over land. Special provisions should be given to single women and women headed households to enjoy land ownership. Also, provisions should be made for women so that they are able to enjoy land ownership rights and fulfil all other requirements to make full use of land ownership. All these issues can be linked with programmatic aspects of implementation in line with the spirit of constitutional provisions (Ghale, 2008). The new constitution must include right to food as a fundamental right with concrete directives to protect the interests and rights of the women and other marginalized communities.

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# Relationship between Land Ownership and Productivity

■ Jagat Basnet

## General Context

Land is a natural resource that is available equally to all. It is unjust for the wealthy to hoard it as their private property. It has implications for the whole populace of the country. Traditionally, land has been the symbol of wealth and social status in Nepal. The rulers had the monopoly of exploiting the land the way they wanted. They owned and controlled almost all arable lands, and provided some as grants to those most favoured and trusted – to ensure their unflinching and unquestionable support to the rulers. This tendency gave rise to the trend of owning land as a permanent property, even when it was beyond the capacity of cultivating and using it as productive resource (Badal Commission, 1995).

There are 4.2 million families in Nepal. Of them, some 1.37 million, constituting over 25 percent of the country's total population, are landless or near landless farmers (CBS, 2001). The landless, majority of whom are *Dalits*, ethnic groups and women, with most of them being illiterate, are solely dependent on farming for their subsistence.

According to a report of the National Planning Commission of Nepal (1998), over 70 percent of tillers own less than 1 hectare of arable land. Likewise, as recorded in the Human Development

Report 2004 (UNDP, 2004), 5 percent rich landowners own 37 percent of arable land, whereas 47 percent poor tillers own only 15 percent.

The situation in Nepal is such that most of those who own the land do not work it. And those who have to work the land for survival do not own it. In this dichotomy of land politics, the poor farmers, who produce the food, suffer most from food insufficiency, malnutrition and livelihood insecurity. But the rich who do not work the land consume all that is produced by the poor. The land-relation in Nepal is thus unjust, and has been a structural cause of human rights violations in the country.

In the current state of affairs, neither the landlords nor the poor tillers have any interest and incentives to invest in land to modernise the farming system and enhance productivity. The landlords do not invest in it because their livelihood does not depend on land, as they usually have other means and opportunities of livelihood. The poor do not invest in the land because (a) they do not have the means, and (b) they are not motivated for increasing productivity as it brings benefits only to the landlords and not to them.

Unless the existing land-relationship is transformed, there is no scope for enhancing the productivity of land and



increasing the contribution of the agricultural sector to the national GDP.

### Land to the Tiller

Community Self Reliance Centre (CSRC) Nepal, an NGO that has been advocating for land rights of the poor farmers for several years, has been supporting Nepali tillers in claiming their right to land through a nationwide movement for land-rights since 1995. The movement had enabled over 13,350 tiller families to receive land entitlements by the year 2006.<sup>1</sup> Three years after the transfer of land ownership to these poor families, CSRC, through an independent team of professional researchers, conducted a study in 2008/09 to look into the impacts of the land entitlements on the lives of the tillers. The study focused primarily on the inter- and intra-household level changes taking place in the study sites. Table 1 shows the total households of land transfer till the end of

### Emergence of New Agricultural Practices: Increased Investments in Land

The study revealed the following major shifts that had occurred in farming and investment in land after the tenancy rights had been guaranteed to the poor farmers.

- A significant number of families shifted the farming from traditional to cash cropping such as vegetable farming and unseasonal farming.
- The tillers had started farming differently to get more yields. They had changed dry land into paddy fields, invested in irrigation system and had moved from cereal crops to cash crops.
- The farmers worked the land throughout the year by harvesting seasonal crops that suited the land. As a result, they were getting almost three

Districts	Households		
	Total Tenant Households	Sample Households Initially Drawn	Sample Households Actually Covered
Sindhupalchowk	6,000	600	580
Sunsari	2,600	260	257
Saptari	530	53	52
Siraha	490	49	48
Mahottari	126	13	13
Chitwan	61	6	5
Bardiya	445	45	45
Banke	1,515	151	153
Dang	1,796	180	182
<b>Total</b>	<b>13,563</b>	<b>1,357</b>	<b>1,335</b>

Source: Field Survey, 2008.

<sup>1</sup> The actual number of those to receive land entitlements has grown to 21,000. But the study has focused on those who got land until the end of 2006.

The key reason for this positive trend in production was the freedom the tenants had got to decide on what sort of crops to grow and how to grow them. Because of that, they worked more intensively than before, used new technology including improved seeds and fertilizer, and diversified the type of crops in the light of the market available. The tillers had become aware of agricultural services available around, both at government and non-government sectors, and were able to mobilize these services. All this had given them higher yields and incomes, and had created the foundation for sustainable agriculture.

The tillers approached the local cooperatives for institutional credit, concerned government departments for agricultural inputs (fertilizers, seeds, insecticides), local NGOs for training support for modernization of the farming systems, and also did collective farming with other tillers. In the past three years, there has been an increased access of tenants to these government and non-government services.

Ownership of land and increased awareness about their rights and services available around were the reasons, as the respondents said, for the increased access to such government services. It is interesting to note that the *Dalits* and ethnic communities were the ones to benefit the most from such services. The participation of women was also found to increase encouragingly in accessing these services. As landless, the tenants had been excluded from these services in the past. Even when such services were available, they did not find any incentive to exploit them as the land was not theirs and the increase in production would not make any difference to them.

These types of institutional linkages with government and non-government agencies for investing in agriculture production had helped the tillers to gain more from the limited piece of land, and also to think and plan on how the agricultural work can be made sustainable. It was also observed during the field survey that, since gaining the tenancy rights, a team of 32 families had developed a barren land into an agricultural land. They applied new technology and mobilized improved agriculture inputs (land plotting, finance, seeds, insecticides, and fertilizers) to work the land. Working in this way gave them more production than similar piece and type of land cultivated by their neighbours. From their increased incomes they were even able to deposit some amount for the movement fund. They were even planning to establish an agricultural cooperative to market their produce.

A total of 36 case studies showed that more than 50 percent of the tenant farmers had begun using agricultural inputs mainly for cash cropping production with the anticipation of higher earnings. It was also revealed, from focused group discussions and case studies, that almost all the tenant farmers who grew paddy and vegetables used chemical fertilizers to get higher production.

### **Increased Land Productivity**

The study revealed that the production and productivity of land increases up to a certain limit if that land is in the possession of those who work it. The average production of paddy, maize, vegetables, oil crops, wheat and pulses was found to increase up to 95 percent after tenancy rights had been granted.

Regarding the size of the production, vegetable production had increased by 95

percent, followed by oil crops (53%), wheat (47%), paddy (24%), pulses (19%) and maize (17%). Vegetable and oil crop cultivation was very attractive to these farmers because of immediate cash earning opportunities in local markets. As soon as tenancy rights were ensured, the tenants began to farm their plots of land more intensively than before, improved the landscape of the piece of land, used improved seeds and fertilizers, and also improved the irrigation system. The freedom to choose the desired variety as well as the methods of growing crops had led to the diversification of crops and higher incomes.

Average quantity of paddy per household was found to have increased in all the districts after receiving tenancy rights. Except in Sunsari, the quantity of wheat had also increased in all the districts. In case of maize production, there was an overall positive change except in the case of Chitwan district.

Earlier studies have shown that cropping intensity, an indicator of efficient use of land and agricultural productivity, is usually higher in small holdings (CBS, 2004; Chapagain, 2001; Badal Commission, 1995). The survey by CBS in 2004 had found that cropping intensity in small-sized holdings of less than 0.5 hectares was 1.94. However, it was only 1.73 in case of large-sized holdings. This fact has been revealed consistently by both the National Sample Census of Agriculture 1991/92 (Chapagain, 2001) and NSCA 2001/2 (CBS, 2004).

This cropping intensity indicator adds to the moral imperatives of providing land to the landless (distribution is an equity-enhancing measure, a human rights concern). It makes a strong case for greater redistribution of land from not only human rights concerns (equity concerns) but also from productivity and food security concerns.

**Table 2: Reported Average Quantity of Different Crops Produced (Before and After Tenancy Rights)**

Categories	Average quantity of production (Kg/Kattha/HH)		% Change
	Before	After	
<b>Crops</b>			
1.Paddy	238.8	295.6	23.8
2.Wheat	42.3	62.0	46.7
3. Maize	51.7	60.4	16.8
4. Millet	17.4	18.6	7.0
4. Vegetables	11.5	22.4	95.1
5. Oil crops	2.9	4.5	53.2
6. Pulses	5.1	6.1	18.5
7 Other*	4.9	7.6	53.8

\* Includes buckwheat, sorghum, etc.

Source: Field Survey, 2008.

**Table 3: Production of Different Crops Before and After the Land Tenancy Rights**

Source: *Fieldwork, 2008*

Note: In both the cases, increase in production was reported to be possible because of intensive labour use, use of fertilizers, pesticides and improved seeds, which was not possible earlier.

### Socio-economic Benefits

Land entitlement, even of a small-scale, has the potential of increasing the productivity of land because of the intensive use of labour (self-employment), and incentives to use modern technology and inputs (as can be seen in tables 2 & 3). Increase in productivity contributes directly to household food security and reduction in poverty.

This study has shown that, until before gaining the tenancy rights, only 29.1 percent of the households were food self-sufficient. However, the number rose to 42.6 percent after acquiring the tenancy rights. Similarly, only 3 percent had a food surplus earlier, but after the tenancy rights it increased to 8.1 percent. The *Dalit* households experiencing food deficit was found to decrease from 78 to 75 percent, while the households with food surplus had increased from 2 to 5 percent. After receiving tenancy rights, the percentage of respondents with food sufficiency for less than 3 months had decreased from 46 to 20, while the percentage of having food

sufficiency for 7-9 months had increased from 26 to 41.

The respondents with surplus food even before getting land rights, as well as those who gained surplus food after getting land rights were further asked to specify the type of cereals and their economic values. The respondents, in general, reported that rice, maize, wheat, millet, vegetables, oil crops, pulses, and sugarcane were their surplus food. The survey revealed that the contribution of paddy surplus had become slightly higher (63.7%) in the overall monetary value after the tenancy rights. It was only 59 percent before. There was only a marginal increase in the contribution of wheat surplus. The contribution of the surplus of pulses was somewhat significant (from 1.6% to 7.6%). A deeper analysis of the data revealed that there had been a phenomenal increase of tenant households with food surplus, that is, 67 percent (108 households) after getting the tenancy rights, which was only 33.3 percent (36 households) earlier (Table 4).

Case of Mr. N Municipality-11, Before	
Production in 1 per <i>Kattha</i>	
Paddy	50 k
Maiz	55 k
Chill	75 k
<i>Arabar</i>	30k
Wheat	60 k
Lentil	40 k
Mustard	30 k

**Table 4: Annual Average Food Surplus (Before and After Tenancy Rights) in Unit Price (NRs.)**

Categories	Surplus Food (NRs./HH/Year)			
	Before (N= 36)		After (N=108)	
	NRs.	%	N Rs.	%
<b>Food Crop</b>				
1. Paddy	5831	(58.6)	11101	(63.7)
2. Wheat	1335	(13.4)	2438	(14.0)
3. Maize	968	(9.7)	905	(5.2)
4. Millet	404	(4.1)	269	(1.5)
5. Oil crops	611	(6.2)	1200	(6.9)
6. Vegetables	604	(6.1)	194	(1.1)
7. Pulses	158	(1.6)	1319	(7.6)
8. Sugarcane	33	(0.3)	-	-
<b>Total</b>	<b>9944</b>	<b>(100.0)</b>	<b>17425</b>	<b>(100.0)</b>

Source: Field Survey, 2008

Note: N= number of respondents having surplus food. HHs= Households. Figures within parentheses indicate percentages.

Similarly, the proportion of those who took three meals a day had increased from 49 percent to 58 percent (after the tenancy rights). Slightly more than one third of the respondents (34%) had only two meals a day before tenancy rights. This had decreased to 14 percent after tenancy rights. It was also revealed that the number of households to have four meals a day had increased from 15 percent to 26.4 percent. The situation of the households who were forced to stay half-fed or go foodless for a few days was also found to have become better after tenancy rights.

Similarly, 53 percent of the respondents reported that household employment had increased after getting the land, more so among the *Dalits* (69.4%). A large majority of the respondents (74.1%) reported that the acquired land had provided full employment for 1-3 members of the family. Another 14 percent said that it had given employment for more than 4 persons. The higher proportion of *Dalits* engaged in self-employment appeared to have stemmed from a motivation to work

their own land after having been traditionally, socially and culturally marginalized from possession of productive resources for ages.

Women's intensive engagement in agricultural works is a historical fact in Nepal. But their participation has rarely been noticed and accounted for. However, this has started to change now. The participation of women in the land rights movement has been on par with men. At the same time, there are some attitudinal and behavioural changes appearing amongst men vis-à-vis gender roles within both the family and the society. There is a growing tendency among men that women should come forward and take a stake in the movement. Amongst the men, there is an increased understanding (58.7%) of the sense of equality between men and women and they now prefer to have the registration of land in the names of both men and women. Such joint ownership, it is thought, will eventually enhance women's status in their families and communities. Women are now more aware of their

rights and are able to articulate their views and concerns. They have also realised that joint ownership of land is vital to enhance their social status and decision-making power.

Another important social change that has been visible is the increased enrolment of children in the schools. Increased household income and food sufficiency has freed the children from the burden of being engaged in house chore and other labour work at the cost of their schooling. Although the national enrolment of children is still low, it is now slowly increasing, even among the poor tenants, as a result of getting tenancy rights.

### Conclusion

The study by CSRS has been important to demystify the dominant notion that land redistribution results in land fragmentation and decrease in productivity. Its central finding has been rather opposite: when the ownership of land is transferred to actual tillers, there is a concomitant increase in production and productivity. The tenancy rights have given tenants and their families a sense of social security and social identity

in the community, an identity that gives the tenants dignity and equal opportunity. The security of tenure has enhanced the sense of freedom and liberty amongst several caste, gender and class groups. It is thus important that in order to create a just Nepal, there is no other way but to give justice to those deprived and denied.

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# No Justice, No Peace: Socio-economic Rights in Nepal's New Constitution<sup>+</sup>

■ Elisabeth Wickeri\*

## I. Introduction

As Nepal's government seeks to move beyond the devastating effects of the armed-conflict that lasted for more than a decade, the economic and exclusionary causes of the conflict remain largely unaddressed. Post-conflict programs in Nepal tend to focus on civil and political rights without also incorporating considerations of economic and social rights (ESR).<sup>i</sup> This reflects the dominance of civil and political rights internationally, despite international law's insistence that all rights are indivisible, interdependent, and interrelated. In Nepal, feudal exclusionary laws and policies that have been reformed

on paper continue to shape the enjoyment of both civil and political rights as well as socio-economic rights. These laws and policies are deeply discriminatory, affecting especially women, indigenous nationalities, those of low caste (in particular *Dalits*, so-called "untouchables"), and ethnic minorities—especially with respect to their access to land and its resources—and were a major contributing factor to growing unrest throughout the twentieth century.<sup>ii</sup> Land, a source of socio-economic resources and political power, is scarce in Nepal, and remains a touchstone for conflict in political centers and in the fields. The land tenure system that existed in Nepal until the mid-twentieth century

<sup>+</sup> This article is an abridged version of a longer article written by the author for the *Drexel Law Review*, and can be cited as Elisabeth Wickeri, *No Justice, No Peace: Conflict, Socio-Economic Rights, and the New Constitution in Nepal*, 2 DREXEL L. REV. 2, 427–490 (2010).

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<sup>i</sup> This article will refer to "economic and social rights," (ESR) and "socio-economic rights" interchangeably. Specific socio-economic rights (for example, the right to housing, right to food, right to education, and right to health) are articulated in the Universal Declaration of Human Rights, and elaborated and codified in the International Covenant on Economic, Social and Cultural Rights. Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. Doc. A/810, at art. 25, 26 (Dec. 10, 1948); *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A (XXI), at art. 11, 12, 13, U.N. Doc. A/6316 (Jan. 3, 1976), available at <http://www2.ohchr.org/english/law/pdf/cescr.pdf> [hereinafter ICESCR]. This analysis will not include a discussion of cultural rights.

<sup>ii</sup> See WHOSE WAR? ECONOMIC AND SOCIO-CULTURAL IMPACTS OF NEPAL'S MAOIST-GOVERNMENT CONFLICT 38–40 (Arjun Karki & Binod Bhattarai eds., 2003); see also JAGAT BASNET, COMMUNITY SELF-RELIANCE CENTRE, LAND RIGHTS MOVEMENT IN NEPAL 1 (2006), [http://www.landcoalition.org/pdf/06nl\\_art\\_csdc.pdf](http://www.landcoalition.org/pdf/06nl_art_csdc.pdf) [hereinafter CSRC, LAND RIGHTS MOVEMENT].

created that nexus, characterized by state ownership, a powerful landed elite, and limited peasants' rights. After almost fifty years of apathetic, incomplete, and insignificant reforms, the Maoist insurgency was waged in part on calls for "land to the tiller."<sup>iii</sup>

A great number of post-conflict and transitional justice programs—those approaches that aim to respond to widespread human rights abuses after periods of conflict or political transition—are underway in Nepal. There is no shortage of civil and political rights violations for the country to cope with following a conflict that left more than 13,000 dead,<sup>iv</sup> and thousands of documented cases of detention, torture, and disappearance, most of which were perpetrated by the State. While the value of programs and policies that aim to ensure accountability and redress are unquestionable, in order to ensure a lasting peace, there is a clear need to consider the socio-economic rights-related needs of Nepalis in the aftermath of a conflict waged along economic lines. This article argues that in order to do this, it will be essential to strengthen protections for ESR in the new constitution. Section II provides an overview of ESR in Nepal today and considers its root causes. Section III then considers the relationship between poverty, socio-economic rights, and conflict generally, and in Nepal specifically. Further, Section III will demonstrate that in Nepal, socio-economic concerns are not just a fundamental rights issue, but also a stability

issue. Section IV discusses the place of socio-economic rights in post-conflict Nepal, and argues that current bodies charged with providing for ESR discussion and guarantees are inadequate. Finally, Section V provides an overview of ESR in Nepal's previous constitutions, and argues that the inclusion of ESR in Nepal's new constitution is a unique opportunity to both guarantee fundamental human rights and ensure a lasting peace.

## II. Historical Exclusion and Socio-economic Rights in Nepal

### A. Historical exclusion

Until the mid-1900s, Nepal operated under a centuries-old land tenure system characterized by state ownership, a powerful, landed elite, and limited peasants' rights.<sup>v</sup> This system remained largely unchanged until the mid-twentieth century, and its imprint is still felt today. The traditional land tenure framework in Nepal was based on state authority and limited individual property rights. Moreover, because the Shah monarchy and Rana dynasty generally conferred grants to the royal family, government functionaries, and their families and associates as a means of ensuring loyalty, generations of Nepalis who were not related to the royal family or working in high-ranking positions for the state were excluded from land ownership.

The traditional system was divided into two primary types of tenure: state

<sup>iii</sup> Interview by World People's Resistance Movement (Britain) with Baburam Bhattarai, October 26, 2009, available at <http://www.wprmbritain.org/?p=926>.

<sup>iv</sup> No comprehensive official statistics exist; while reports generally cite the figure 13,000 killed, the actual number may be higher. The Informal Sector Service Centre (INSEC), a Nepali human rights organization, puts the figure of deaths between 1996 and 2006 at 13,347. INSEC, *No. of Victims Killed by State and Maoist in Connection with the "People's War"* (Feb. 13, 1996–Dec. 31, 2006), <http://www.insec.org.np/pics/1247467500.pdf>.

<sup>v</sup> See MAHESH C. REGMI, *LANDOWNERSHIP IN NEPAL* 16, 197 (1976); WILY, *LAND REFORM IN NEPAL* at 82.



landlordism, known as *Raikar*, whereby the state owned all land and alone retained the right of alienation through sale, mortgage, or bequest; and *Kipat*, a form of communal land ownership whereby “traditional concepts of customary rights in the land” applied.<sup>vi</sup> The vast majority of land was organized under *Raikar* tenure after unification of the country in 1768; this system secured ownership of land in the state, and ownership could only be relinquished upon state initiative through sale, mortgage, or usage grants to individuals or organizations. Even then, such land grants were subject to state resumption or confiscation with one exception. Absent a grant of some sort, private individuals who lived and farmed on *Raikar* land were considered tenants of the state, and paid annual land taxes in exchange for the right to cultivate the land. *Raikar* tenure operated through three sub-systems: *Birta* (grants to upper classes that consolidated their wealth and power), *Guthi* (grants to religious or charitable institutions), and *Jagir* (grants in consideration for services for state employees).<sup>vii</sup>

Each of the systems helped solidify class determinations, where non-agriculturalists were given control of the land at the cost of the agrarian class. This control was bolstered by absentee landlords, intermediaries, arbitrary evictions, and revenue contractors, all of which kept the peasant class dependent while exploiting agricultural resources. Mass illiteracy and innumeracy among peasants (as well as

discrimination) prevented upward mobility, and also heightened vulnerability to each of these factors: peasants had no way of verifying which taxes, for instance, were lawful and which were not. Because it was such an effective means of both ensuring loyalty and increasing tax revenue for a newly-unified country, there were few changes to the system of land governance for almost two centuries.

### B. Discrimination

Caste, ethnicity, gender, and geographic origin played a large role in determining access to and control over economic and political resources throughout the twentieth century and continue to be a significant determinant today.<sup>viii</sup> In particular, the caste system and social hierarchy remains the single most determinative factor in terms of excluding low caste Nepalis, specifically *Dalits*, from social and political access and power. The system has historic and religious bases and creates a social hierarchy at birth that individuals are unable to escape throughout their lives. The system formalizes discrimination and impacts a broad range of rights, including access to food and water, land, work, and political participation. The caste system also takes different forms in different regions of the country—mountains, hills, and Tarai—and amongst speakers of different languages, and an internal hierarchy within the various castes, including the *Dalit* population, with some *Dalit* groups having a higher social status than others,<sup>ix</sup> resulting in an extremely complex system of social relations.

<sup>vi</sup> The tradition of *Kipat* dates back to pre-unification Nepal, when the area now known as Nepal consisted of a number of principalities, each with their own political, economic, social, and cultural systems. TULSEY RAM PANDAY ET AL., UNESCO, FORMS AND PATTERNS OF SOCIAL DISCRIMINATION IN NEPAL, A REPORT 33 (2006).

<sup>vii</sup> REGMI, LANDOWNERSHIP at 16–18.

<sup>viii</sup> See Rajendra Pradhan & Ava Shrestha, *Ethnic and Caste Diversity: Implications for Development* 16–19 (Asian Dev. Bank, Nepal Resident Mission, Working Paper No. 4, 2005), available at <http://www.adb.org/Documents/Papers/NRM/wp4.pdf>.

Equality provisions and prohibitions against discrimination have been a part of Nepali law since the 1950s, first appearing in the 1951 Constitution—Nepal’s second constitution.<sup>x</sup> The article covered only discrimination by the state, however, and therefore did not prohibit all forms of discrimination, but equality and anti-discrimination provisions remained in each of the subsequent constitutions, and gradually became stronger. During the Panchayat (“partyless democracy”) years between 1960 and 1990, affiliation along caste and ethnic lines was “discouraged” by the government as an impediment to development and nation-building, and all political parties were banned. The post-*Jana Andolan I* (People’s Movement I) Constitution of 1990 provided for multi-party democracy and was also much more inclusive than past documents, explicitly prohibiting discrimination on the basis of caste and gender. However, the constitution itself remained discriminatory. For example, women could not pass citizenship onto their children, and moreover, discrimination on the basis of caste for religious reasons could still be permitted. The 1990 Constitution did, however, also include provisions to provide for the inclusion of women in the national government, and allowed for special measures to be taken for the advancement of vulnerable groups. Prohibitions against caste discrimination in national legislation also began to appear in the 1950s.

Despite these legal protections against discrimination on the basis of caste and gender, in practice discriminatory practices remain commonplace, both due to a lack of enforcement and because other discriminatory laws remained on the books even after discrimination was barred by the constitution or in other laws. In 2000, for example, one non-governmental organization (NGO) identified more than one hundred provisions in Nepali laws and regulations that had facially discriminatory provisions.<sup>xi</sup> These included a lack of criminalization of marital rape; restrictions on property inheritance; issues in employment, health, education, and family relations; and discriminatory citizenship laws that allow fathers, rather than mothers, to vest citizenship upon their children. Some of these provisions have since been struck down as a result of litigation,<sup>xii</sup> and others have now been superseded by provisions in the Interim Constitution, which includes the strongest constitutional provisions prohibiting discrimination and protecting vulnerable groups to date.

### C. Landlessness and rights

Discrimination and the condition of landlessness form the primary method of denying economic and social rights in Nepal. The primary source of economic subsistence and productivity in Nepal is ownership of or access to land.<sup>xiii</sup> It is the single most important resource in a country that is still largely rural and heavily reliant

<sup>ix</sup> Mary M. Cameron, *Transformations of Gender and Caste Divisions of Labor in Rural Nepal: Land, Hierarchy, and the Case of Untouchable Women*, 51 J. ANTHROPOLOGICAL RES. 215, 220 (1995).

<sup>x</sup> NEPAL CONST. of 1951 art. 15(1) (“His Majesty’s Government shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”).

<sup>xi</sup> See Jane Aiken, *Lessons from Nepal: Partnership, Privilege, and Potential*, 2 WASH. U. GLOBAL STUD. L. REV. 391, 402 (2003); see also CTR. FOR HUMAN RIGHTS, RIGHTS WITHIN REACH at 13–14.

<sup>xii</sup> For example, laws on marital rape were amended following a legal challenge by the Forum for Women, Law, and Development. Charles J. Ogletree & Rangita de Silva-de Alwis, *The Recently Revised Marriage Law of China: The Promise and the Reality*, 13 TEX. J. WOMEN & L. 251, 278 (2004).

<sup>xiii</sup> See REGMI, LANDOWNERSHIP at 16.

on agriculture. Land is an economic resource, but it also occupies a position of primary social, political, and symbolic importance,<sup>xiv</sup> serving as an indicator of wealth and power, and affecting a host of related social, political, and economic goods, from education to electricity.<sup>xv</sup> As demonstrated below, land provides the platform for access to fundamental human rights. Indeed, landlessness in Nepal—the condition of living or working on land in which the individual has no legal rights—is characterized by: exploitative labor conditions for tenant farmers; near-bonded-labor conditions for bonded laborers freed as recently as 2002 and 2008; frequent arbitrary and often violent evictions; lack of access to traditional resources (for example, fisheries and forests) for tribal and indigenous groups; lack of access to water and food resources; inability to access police and the judiciary; and deep-seated discrimination.

The effects of these conditions on disparity in land distribution and ownership in Nepal is stark. According to the 2001 census, forty-seven percent of land-owning households owned only fifteen percent of the land with an average size of less than 0.5 hectares, whereas five percent owned nearly thirty-seven percent. The 2004 U.N. Development Programme Human Development Report further shows that almost 29 percent of rural households do not own any farmland at all; other figures suggest that at least 10 percent of Nepalis are completely landless,<sup>xvi</sup> and up to 85 percent of Nepal's rural households can accurately be

described as “land poor.” However, the figures on landholdings are outdated and inadequate; records in each district are not yet computerized and often consist of bags of land certificates sitting in district land reform or land survey offices. Existing data and interviews with landless people living in the Tarai does, however, make clear that landlessness leads to poverty and violations of fundamental human rights. In particular, families who do not own land or do not have registered tenancy rights are vulnerable to exploitation by landlords and local officials, and are themselves unable to access their rights to food and housing.

A land certificate demonstrates ownership of land or registered tenancy, and is required to set up services, including water and electricity. The legal framework does not recognize nonregistered tenants. As a result, landless communities are left with few options but to live without electricity and running water, borrow from their landlord, or try to become registered—a process that is extremely difficult and exploitative: many people report trying to register land numerous times in order to obtain running water or electricity to no avail, others discover that land they have lived on for generations is already registered in someone else's name. Local officials as well as service installers frequently ask for additional payments in order to provide services. Local authorities deny that bribing occurs, but also admit that there are no oversight mechanisms to ensure that abuses do not occur. Local government workers agree that the

<sup>xiv</sup> CSRC, *LAND RIGHTS MOVEMENT IN NEPAL: REFLECTIONS 2005 FOREWORD* (2006).

<sup>xv</sup> CSRC, *LAND TENURE SECURITY* at 5.

<sup>xvi</sup> WILY, *LAND REFORM IN NEPAL* at 45 (settling on a 10% estimate after explaining how various reports like the Community Self-Reliance Center, the Informal Service Sector [INSEC], the National Population Center, the National Agricultural Census, and the World Bank reported in 2006 that Nepal's landless population reached 16% without clearly defining landlessness).

problem is that official channels are not available to people who are “landless,” or unregistered, and many people are not registered because agreements have for generations been verbal. The fact remains that the lack of registration has a real impact on people’s everyday lives. Even where communities are wired, servicing one’s home is often cost-prohibitive for families that struggle “to put food on the table.” As a result, landless people rely on their landlords for loans for school fees, medication, food, and other expenses - debts they cannot pay off.

People have often lived on land without a land certificate for generations. Despite reforms that purportedly sought to make registration of tenancy more accessible, many illiterate tenants never heard of the reforms, much less understood them. Because the land certificate is such a powerful document in gaining access to services and acting as a form of identity, those without the document are extremely vulnerable to abuse. There is no tenancy security for anyone without a land certificate because a landowner can appeal to local authorities to have him evicted.<sup>xvii</sup> The law does not require any of the due process procedures required under international law. More often than not, landlords simply hire others to evict communities, often violently. In 1997, the law was amended to allow people who had been living on land for at least five years to register for stronger tenancy rights, even providing some ownership rights.<sup>xviii</sup> The result has been, however, that landlords now evict communities more frequently, ensuring that people do not stay on land long enough to register. People

living on public lands are similarly at risk for eviction, and fear being removed when they notice public works that are likely to affect the land they live on.

Landlords appear to actively avoid formal relationships with their tenants and the associated obligations that such a relationship would create. They take advantage of the fact that many of their tenants are illiterate, and do not sign provide documents that are inaccurate. Oral agreements are traditionally renewed annually, but there is no way to prove they exist when landlords, who are much more powerful, break them. Those who do enter into written agreements report not knowing what they are signing. Their vulnerability prompts them to sign regardless of what they are told. Landless people who take out loans from their landlords never know exactly what they owe, leaving them in long-term and deep debt.

Many tenants are not aware that they can ask for a receipt for the grain they provide to the landlord as evidence of their agreement to live on the land. This leaves them vulnerable to abuse. Even where grain receipts are provided, tenants are ill-equipped to ensure their accuracy. For many ex-*Kamaya* and ex-*Haruwa*, their relationships with their landlord have changed little despite the fact that they are no longer bonded, particularly with respect to the extent of their debt.<sup>xix</sup> Landlords still make loans to ex-bonded laborers living on their land, often with interest rates as high as sixty percent, leaving them with much the same relationship as they had previously, and with patterns of abuse

<sup>xvii</sup> Lands Act of 1964, Ch.4 (29).

<sup>xviii</sup> The 1997 amendment to the 1964 Lands Act provided for a transfer of 50% of the land to registered tenants. WILY, LAND REFORM IN NEPAL at 107.

<sup>xix</sup> See Nepali & Pyakuryal at 99.

similar to what they faced as bonded laborers. Ex-bonded laborers continue to suffer from food insecurity and poverty in the absence of government assistance.<sup>xx</sup> Another key area for concern is that many tribal groups rely on the rivers and forests for food security. As deforestation occurs and other lands are established as “national forests,” tribal groups lose their access to these valuable resources and are not provided with alternative food assistance. Further, the state has failed to recognize the rights of indigenous people with regard to traditional resources.

The state’s failure to seek consent from the relevant stakeholders in the land shows that it has not effectively addressed the negative impacts of protected areas and forest management policies on equitable and fair access to natural resources and land. The state’s resettlement provisions have instead served as serious impediments to secure land tenure for indigenous communities and others who have historically resided, often based on customary land ownership, on now-protected land.

Although local authorities frequently assert that most people now have land certificates, the reality is that this assertion is far from the truth. For illiterate farmers who work every day, the process of getting certificates is difficult and daunting. Some local officials admit that there are problems for people who do not have proof of land ownership or tenancy, even after official drives to register tenants who had been tilling the land for generations. Even those who are willing to attempt to register

simply do not know which of the many local offices regulating land has the ultimate authority to provide a land certificate.

Moreover, tenants charge that local officials are in league with the landlords or are landlords themselves, putting them at a disadvantage. There are few political avenues for farmers who live miles away from the local district office, let alone Kathmandu. The result has been, therefore, that land-poor communities are vulnerable not only to abuse by large landowners, but also to manipulation by groups who seek to organize them for political gain. The ties that bind farmers to political tensions are rooted in land.

### III. Conflict and Socio-economic Rights in Nepal

There is little doubt that an intimate link exists between poverty, exclusion, and conflict. The negative effect that conflict has on poverty has been well-documented, and arguments are progressively made to demonstrate the contributing role that poverty and economic exclusion play in causing conflict. A rights-based approach to poverty provides a means of examining the relationship between conflict and the deprivation of socio-economic rights. While there is some debate around whether the condition of poverty is itself a human rights violation, it is generally agreed that poverty results from the violation of existing human rights obligations, and in particular socio-economic rights.<sup>xxi</sup> The protection of socio-economic rights therefore provides a means of both

<sup>xx</sup> See NARAD N. BHARADWAJ ET AL., FRIENDS FOR PEACE AND INT’L ALERT, NEPAL AT A CROSSROADS: THE NEXUS BETWEEN HUMAN SECURITY AND RENEWED CONFLICT IN RURAL NEPAL 30 (2007), available at [http://www.nrc.ch/8025708F004CE90B/\(httpDocuments\)](http://www.nrc.ch/8025708F004CE90B/(httpDocuments)); see also SHIVA SHARMA ET AL., INT’L LABOR ORG., NEPAL: BONDED LABOUR AMONG CHILD WORKERS OF THE KAMAIYA SYSTEM: A RAPID ASSESSMENT 7 (2001), available at <http://bravo.ilo.org/public/english/region/asro/newdelhi/ipec/download/resources/nepal/nppubl01eng12.pdf>.

<sup>xxi</sup> See, e.g., U.N. ECOSOC, Comm’n on Human Rights, *Human Rights and Extreme Poverty*, ¶ 8, U.N.-Doc. E/CN.4/1999/48 (Jan. 29, 1999) (prepared by Ms. A-M Lizin, Independent Expert).

combating poverty and avoiding conflict.

Exclusion from land and its resources therefore often results in entrenched poverty but has also contributed to conflict. Inadequate protection of housing, land, and property rights create a nexus of socio-economic rights concerns that have been linked to many conflicts worldwide. A state's best option toward ensuring security is to ensure that these rights—including tenure security, equal access to land in the market, and access to resources—are protected. Struggle over control of land in Nepal is exacerbated by its history—the long-entrenched feudal and discriminatory laws and policies relating to land—but also its geography. Due to its extreme topography, at least seventy-five percent of the country's land is uncultivable.<sup>xxii</sup> The result is deeply skewed land ownership patterns. Despite reforms that began in fits and spurts in the early 1950s to dismantle the system, the lack of political will and absence of any mechanism for oversight means that many of the same power dynamics that were in place two centuries ago persist today. A brief review of the framework implemented by the Rana Regime and kept in place by subsequent governments is instructive as a basis for identifying the way that land, socio-economic rights, and conflict are intertwined in Nepal.

#### *A. Inadequate reform*

For almost two centuries, the land tenure system in Nepal remained intact. During

escalating tensions in the 1940s and 1950s among tenant farmers, however, the state was finally forced to institute reforms, which coincided with a time of political change. The 1964 Land Reform Act enacted progressive, if not always beneficial, changes to the land tenure framework, and was amended six times (most recently in 2001). It remains the primary law governing rights in land in Nepal today. The Act imposed ceilings on land holdings, fixed rents to the landowner at 50 percent of the principal crops, abolished intermediary tax collectors (the *jimidari* system), strengthened tenant protections, and introduced measures such as “compulsory savings schemes” to generate capital for investment in rural areas.<sup>xxiii</sup>

Unfortunately, the reforms that began in the 1950s also served to further entrench a landed elite and poor, disenfranchised class due to lack of political will, ineffective implementation, and the fact that, to take advantage of the benefits provided by the Act, landless tenants had to know about them, understand them, and access the process. All of these are relatively extreme assumptions for a largely uneducated and illiterate peasant class whose landlords had little incentive to inform them of their rights. The drawbacks of the Act were many:

- *Ineffective land ceilings:* Land ceilings were poorly conceived and badly executed,<sup>xxiv</sup>

<sup>xxii</sup> U.S. DEPT. OF STATE, BACKGROUND NOTE: NEPAL, ECONOMY (2009) <http://www.state.gov/r/pa/ei/bgn/5283.htm> (last visited Apr. 16, 2009).

<sup>xxiii</sup> See WILY, LAND REFORM IN NEPAL at 104.

<sup>xxiv</sup> Ravi Bhandari, *Searching for a Weapon of Mass Production: The Case of Market-Assisted Land Reforms in Nepal* In “Reflections on Market-Oriented Land Policies,” as part of the International Conference on Land, Poverty, Social Justice, and Development (The Hague, Jan. 9–14, 2006).

allowing, for instance, big landholders to transfer holdings to family members to avoid violating the cap.<sup>xxv</sup> Acquired but undistributed land remained in the hands of the owners, sometimes for as long as fifteen to twenty years, or was distributed to the wrong beneficiaries.

- *Reduced avenues for landless tenants to acquire land:* Poor tenants lost rights in the land they tilled,<sup>xxvi</sup> an obstacle compounded by the fact that so many peasants lived in a state of indebtedness let alone producing enough to buy land.
- *Insecurity of tenure:* Although arbitrary evictions were outlawed, there were broad exceptions, including the right to forcibly evict a tenant if the landowner submitted a request to use the land for residential, as opposed to agricultural, purposes. Tenants were permitted to file complaints, but these had to be made in writing.<sup>xxvii</sup>
- *Creating a politically and socially invisible landless class:* The Act required the registration of tenants for farmers to take advantage of tenancy rights, but few knew to register.<sup>xxviii</sup> Without reference to unregistered tenants (i.e., landless farmers) the Act effectively precluded any upward mobility.
- *Confiscation of indigenous lands:* Remaining *Kipat* (traditional non-State) holdings were effectively abolished by

confiscating the communal lands and forests of indigenous communities and redistributing them as private property to the ruling class, decimating traditional ethnic communities.

Thus, despite reforms in the 1960s and through the end of the twentieth century, there remained a large disenfranchised class: seven-and-a-half percent of people own nearly a third of the farming area, while nearly half of all holdings are too small to enable families to meet subsistence requirements.<sup>xxix</sup>

#### B. Growing conflict

The 1990 People's Movement (*Jana Andolan I*) ended the absolute monarchy, and ushered in a period of constitutional democracy, ending the one-party Panchayat system. Land reform rhetoric again took the stage, most famously with the constitution of the 1995 Badal Commission. The Commission Report is still referenced by land rights activists and government actors alike as having produced the best recommendations for realistic and meaningful land reform in Nepal. The Commission proposed stronger tenant rights, transfer of ownership rights to some registered tenants, lowering of land ceilings and the establishment of a land floor, and stronger implementation mechanisms. But the Commission was largely a failure due to the government's inability to implement its

<sup>xxv</sup> See Rishi Raj Lumsalee, *Land Issues in Nepal 2* (June 4-6, 2002) (paper presented at the Regional Workshop on Land Issues in Asia). See also Bhandari at 25.

<sup>xxiv</sup> REGMI, *LANDOWNERSHIP* at 188.

<sup>xxvii</sup> See *Lands Rules of 1964*, ch. 1(7). The Lands Rules were promulgated by the King in accordance with the Lands Act.

<sup>xxviii</sup> LAND WATCH ASIA, *ASSERTING FREEDOM FROM CENTRAL CONTROL* 113 (2008) available at [http://www.angoc.ngo.ph/pdffiles/SRL\\_Nepal.pdf](http://www.angoc.ngo.ph/pdffiles/SRL_Nepal.pdf). The Ministry of Agriculture estimated that approximately forty percent of tenants were left out of this process. Bhandari at 28.

<sup>xxix</sup> WILY, *LAND REFORM IN NEPAL* at 52.

findings. The instability that impeded that implementation—in the capital and in the fields—continued through the late 1990s amid ongoing exclusion of most rural people, especially vulnerable groups and minorities, from land and its resources.

Two weeks before it launched its armed insurgency in 1996, the Maoist Party issued a 40-point Charter of Demands, criticizing the government for prioritizing “privatization and liberalization” at the expense of the Nepali people who were suffering from dire poverty and an inability to subsist.<sup>xxx</sup> Among several demands related to employment, exemption of farmers from loan repayments, and increased availability of fertilizer and seeds, the memorandum specified that “[l]and should [...] belong to ‘tenants.’ Land under the control of the feudal system should be confiscated and distributed to the landless and the homeless.” The Maoists officially launched their “people’s war” or “rule of the proletariat” in mid-February 1996.<sup>xxxi</sup> Amid the Maoists’ calls for an end to discrimination, the establishment of a secular republican state, and a constituent assembly to draw up a new constitution, they waged their war in the villages, organizing uprisings against landlords. In 2005, the head of the Unified Communist Party of Nepal (Maoist) (“CPN (Maoist)”) Pushpa Kamal Dahal, better known by his nom de guerre, Prachanda (“the fierce one”), characterized the revolution as “basically . . . agrarian.”<sup>xxxii</sup>

The Maoists developed their tactics regionally: in the Tarai, they seized land from big landholders and redistributed it among tenant farmers and landless groups; in the hill districts, where most people had small holdings, they aimed to “develop collective farming and revolutionize the production relations.” The seizure of land was often violent and included organized squad raids on homes and lands, bombings, beatings, and killings. The victims were frequently left homeless and unable to return to their property or villages. Tens of thousands of people, who included former property holders but were more often ordinary tenants terrorized by the violence, were displaced as a result of the conflict.<sup>xxxiii</sup>

### C. Post-conflict ESR

During the conflict, numerous rights violations were perpetrated, including arbitrary killings, detentions, rapes, torture, and disappearances, on both Maoist and government sides. Socio-economic rights violations, however, were also rampant: while denial of these rights contributed to growing tensions and escalating conflict in Nepal, so too did conflict escalate their violation. The result is that at the end of the ten-year conflict in 2006, much of Nepal’s population lived out of reach of those rights guaranteed in international covenants or domestic law. Physical destruction in the Tarai and hill regions, *bandhs* (strikes), and forced closures of government offices, where fighting was

<sup>xxx</sup> Memorandum from Baburam Bhattarai, Chairman, Cent. Comm., United People’s Front, Nepal, to Prime Minister’s Office, Singha Darbar, Kathmandu (Feb. 4, 1996), available at <http://www.satp.org/satporgtp/countries/nepal/document/papers/40points.htm>.

<sup>xxxi</sup> HUMAN RIGHTS WATCH, BETWEEN A ROCK AND A HARD PLACE: CIVILIANS STRUGGLE TO SURVIVE IN NEPAL’S CIVIL WAR 9 [hereinafter HUMAN RIGHTS WATCH, BETWEEN A ROCK], available at <http://www.hrw.org/sites/default/files/reports/nepal1004.pdf>.

<sup>xxxii</sup> LI ONESTO, DISPATCHES FROM THE PEOPLE’S WAR IN NEPAL 67 (2005).

<sup>xxxiii</sup> RURAL RECONSTRUCTION NEPAL, DEVELOPMENT STRATEGIES FOR A NEW NEPAL: A NATIONAL DEBATE 61 (2007).



concentrated, disrupted local infrastructure including roads, waterways, electrical wiring, and communications systems, cutting off physical access to food, water, and services. Many children did not attend school during the conflict, and disruptions in higher education led to a dearth of teachers and nurses. Constant conflict and raids in rural communities also upset food production, leaving many communities who already suffered from food shortages in even more precarious settings. In the aftermath of the active conflict, access to clean water, food, housing, land, and education are all tenuous for millions living in rural areas.

#### IV. Efforts at Promoting Socio-economic Rights in Post-conflict Nepal

Exclusion from land and ESR violations have often contributed to and escalated conflict, and as a result of the conflict, violations of ESC are themselves escalated. Nepal's history encapsulates the relationship between exclusion, ESC, and access to land that has frequently underpinned in conflict. This would suggest that in the aftermath of serious conflict, approaches that seek to ensure accountability and punishment, establish truth, compensate victims, engage in institutional reform, and prevent future conflict would incorporate socio-economic rights issues as core considerations. In fact, however, post-conflict and transitional justice programs worldwide have tended to limit themselves to civil and political rights concerns, even where ESR issues have been recognized

as factors contributing to the causes of the conflict.<sup>xxxiv</sup> In Nepal, this general principle holds, though in fact the CPA and subsequent documents setting the framework for post-conflict transition do include numerous references and commitments to ESC. The most fundamental way for the country to ensure strong future protections of these rights will be to include them in a more robust manner in the constitution now being drafted.

Recognizing the disconnect between the causes and consequences of conflict and the emphasis in current post-conflict models, some practitioners now advocate a "holistic" theory of justice. Holistic justice that will incorporate ESR concerns ensures that transitional justice will "reach to—but also beyond—the crimes and abuses committed during the conflict that led to the transition, and it must address the human rights violations that pre-dated the conflict and caused or contributed to it." This holistic approach would ensure that in the aftermath of conflict, ESR becomes a focus of the work of the transitional government as well as international actors. This view confirms the notion that socio-economic rights are an indisputable part of the comprehensive human rights framework, which demands the justiciability of ESR.<sup>xxxv</sup> Yet in the post-conflict years of Nepal, during which the international community flocked to the country to collaborate with the government, set up transitional justice mechanisms, consider justice for those killed and disappeared during the conflict,

<sup>xxxiv</sup> Louise Arbour, *Economic and Social Justice for Societies in Transition*, 40 N.Y.U. J. INT'L L. & POL. 1, 3 (2007).

<sup>xxxv</sup> For an overview of justiciability and ESR, as well as a review of cases, see International Commission of Jurists, *Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability* (2008). See also Christine Chinkin, *The Protection of Economic, Social and Cultural Rights Post-Conflict* (2008).

the question of ESR has been virtually ignored. The same is true for local government bodies. This is not to say that work in post-conflict Nepal that focuses on prosecuting perpetrators of civil and political rights abuses is not important—that, too, is essential. However, without paying ample attention to ESR violations, Nepal runs the risk of ignoring factors that will undermine the peace process and destabilize the government.

### V. Towards a Lasting Peace: Socio-economic Rights in Nepal's New Constitution

Constitutional entrenchment of socio-economic rights is often a key aspect of transition for post-conflict and other transitional countries, in part because exclusion from socio-economic power (as well as political power) is problematic prior to transition. For example, South Africa's constitution adopted following the end of Apartheid is one of the most comprehensive worldwide, including numerous ESR, including protections for workers' rights, environmental rights, the right to education, "the right to use the language and to participate in the cultural life of their choice," and the right to access to health care, food and water, and adequate housing, among others. The South African constitution is an instructive example for Nepal because it also includes commitments to engage in land reform,<sup>xxxvi</sup> and because the post-Apartheid

government that drafted the constitution was dominated by the African National Congress, which had for decades called for substantive social and economic rights to be guaranteed to all.<sup>xxxvii</sup> Similarly, Timor Leste's constitution adopted after the conflict leading to independence includes protections for the right to work, property, health, and housing. The experience of Timor Leste, a post-conflict country that continues to struggle with many of the same issues that face Nepal—including accountability for rights violations following conflict, the way to incorporate ESC rights into the transitional justice framework,<sup>xxxviii</sup> and access to land and conflict—is similarly useful.

Constitutional entrenchment of rights provides the means of ensuring compliance with international obligations which require that everyone is entitled to an effective remedy. Unlike legislative protections, constitutional provisions stipulate guarantees which are more difficult to change or amend, ensuring a baseline of protections for all. This kind of protection is especially important to ensure that the rights of minorities and otherwise vulnerable groups are protected from legislative curtailments undertaken by groups who have stronger representation in positions of political power. Despite settled international principles demanding that civil and political rights and ESR be treated in the same manner,<sup>xxxix</sup> the international discourse frequently continues

<sup>xxxvi</sup> S. AFR. CONST. § 25(4)–(6).

<sup>xxxvii</sup> See AFRICAN NAT'L CONG., 1994 ELECTION MANIFESTO, available at [www.anc.org.za/ancdocs/policy/manifesto.html](http://www.anc.org.za/ancdocs/policy/manifesto.html).

<sup>xxxviii</sup> *Chega! The Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste* Chapter 3 (2005), available at <http://www.cavr-timorleste.org/cheqaFiles/finalReportEng/07.9-Economic-and-Social-Rights.pdf>.

<sup>xxxix</sup> The Vienna Declaration proclaims that "[t]he international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis." *Vienna Declaration* ¶ 5. See also *Proclamation of Tehran* ¶ 13; *Maastricht Guidelines* ¶ 4.

to treat ESR differently in nature, content, and obligation.<sup>xl</sup> Some commentators and states take issue particularly with justiciability, arguing that as mere aspirational goals, socio-economic rights have no place in constitutions or the courts. Successful adjudication of ESR in numerous courts worldwide, however, has demonstrated that objection to ESR on that basis is without merit. In addition to the powerful rhetoric of “rights,” which is often available in court only to those claiming civil and political rights, socio-economic rights litigation has provided for substantive legal and policy changes, judgments on specific substantive rights violations, and judgments that demand government action on the basis of non-discrimination and equality in order to rectify situations in which some groups are unable to access their rights.

In Nepal, the Constituent Assembly’s efforts to draft a new constitution have drawn a great deal of attention particularly as related to what kind of federal structure the government will take, representation of Nepal’s diverse ethnic and social groups, and inclusion of fundamental rights. While Nepal’s Interim Constitution goes further than earlier iterations in protecting socio-economic rights, it remains out of sync with Nepal’s international obligations. Drafting a new constitution therefore presents a unique opportunity for the government of Nepal to provide stronger protections, particularly for groups who have traditionally been denied fundamental human rights.

There is no specific obligation for a State to include economic and social rights in its

constitution, but States Parties are obligated to give domestic effect to the ICESCR.<sup>xli</sup> Because Nepali legislation does not otherwise provide protections for all the rights in the Covenant, drafting the new constitution provides a unique opportunity to include them as foundations to the post-conflict Nepali legal framework and comply with international legal standards, as well as the Nepal Treaty Act which requires the state to give effect to international treaties to which it is a party.<sup>xlii</sup> The new constitution should clarify and expand provisions relating to ESR; both to comply with its international obligations, and to secure a lasting peace.

The fundamental rights in Part 3 of the constitution fall short of the obligations imposed by the ICESCR. For example, Part 3 does not include a right to adequate housing; the right to housing is referenced in Part 4, but as a directive policy of the state. The provisions in Part 4 cannot be adopted wholesale into Part 3 because they are not drafted as rights *per se*, but Part 3’s protections must be expanded upon and strengthened, especially with respect to food, housing, water, and work, all of which were contributing factors to the conflict, and as a result should merit special attention by the constitution’s drafting committees.

Constituent Assembly Committees charged with reviewing each section of the Interim Constitution recently returned reports to the full assembly, identifying how the new constitution should incorporate provisions from the Interim Constitution, and what elements need to

<sup>xl</sup> See Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, G.A. Res. 63/117, U.N. Doc. A/RES/63/117 (Dec. 10, 2008).

<sup>xli</sup> See, CESCR, *General Comment 9*, ¶ 1.

<sup>xlii</sup> Nepal Treaty Act, 2047 (1990), art. 9 (in effect Nov. 11, 1990).

be changed entirely.<sup>xliii</sup> In many respects, the reports of the CA Committees do identify the need to change or to incorporate additional elements; but the proposed changes still fall short of international standards.<sup>xliv</sup> Recommended language related to the right to food<sup>xlv</sup> does not specify food as a fundamental right, as included in the ICESCR. The proposed right to housing is articulated as the “right to an access to proper accommodation,”<sup>xlvi</sup> which does not provide for adequate housing. Several of the proposals redrafting articles still include language limiting rights “in accordance with law.” Moreover, a new provision related to the “Implementation of Fundamental Rights and Constitutional Treatment” includes language allowing for a delay in implementing rights, and states that Nepal should “make appropriate provisions for the implementation” of the rights in Part 3. This language again has the potential to limit the rights set out in the same section, especially as it does not refer to all rights, or to the rights as fundamental human rights. Finally, proposed revisions to articles currently under Part 4 still fail to clarify that human rights referenced in that part remain fundamental rights and are fully enforceable.

The Nepali Supreme Court has enforced socio-economic rights in the constitution constitutional provisions in cases brought before it, including by interpreting constitutional provisions outlining state objectives expansively. In 2001, the Court interpreted the “directive principles” in the 1990 Constitution to include providing pure drinking water.<sup>xlvii</sup> The Court did not guarantee the right to water, but did direct the Ministry of Housing and Physical Development to oversee the distribution of water. The Court also held bonded labor to be illegal (1992),<sup>xlviii</sup> outlawed the owning of *Halīyas* (2006), and required equal treatment for lesbian, gay, bisexual, transgender, and intersex people. An expansive constitution may enable further entrenchment of socio-economic rights. As Brinks and Gauri have noted, the ESR provisions adopted by developing countries may initially be an “overdraft.”<sup>xlix</sup> However, a constitution that includes all fundamental human rights allows for groups and individuals to “find some hook, some demand mechanism, to bring universal principles to bear on their own particular situation. When they are active and effective, the courts have become one of many such possible mechanisms.” A

<sup>xliii</sup> CONSTITUENT ASSEMBLY COMM. FOR FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES, A REPORT ON THEMATIC CONCEPT PAPER AND PRELIMINARY DRAFT (2010). See Centre for Constitutional Dialogue, <http://ccd.org.np/new/> (last visited Mar. 22, 2010).

<sup>xliv</sup> For a full analysis of the Fundamental Rights Committee’s recommendations and their compliance with international law, see CTR. FOR HUMAN RIGHTS, RIGHTS WITHIN REACH at 2–10.

<sup>xlv</sup> CONSTITUENT ASSEMBLY COMM. FOR FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES, A REPORT ON THEMATIC CONCEPT PAPER AND PRELIMINARY DRAFT 63 (2010).

<sup>xlvi</sup> CONSTITUENT ASSEMBLY COMM. FOR FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES, A REPORT ON THEMATIC CONCEPT PAPER AND PRELIMINARY DRAFT 63–64 (2010).

<sup>xlvii</sup> Advocate Prakash Mani Sharma and others v. Nepal Drinking Water Corporation and others, WP 2237 1990 (Jul. 10, 2001).

<sup>xlviii</sup> WILY, LAND REFORM IN NEPAL at 106.

<sup>xlix</sup> Daniel M. Brinks & Varun Gauri, “A New Policy Landscape: Legalizing Social and Economic Rights in the Developing World,” in VARUN GAURI & DANIEL M. BRINKS, Eds., COURTING SOCIAL JUSTICE: JUDICIAL ENFORCEMENT OF SOCIAL AND ECONOMIC RIGHTS IN THE DEVELOPING WORLD 303, 304 (2008).

Nepali Supreme Court that remains active can apply international standards more effectively when they are comprehensively drafted into the new constitution. At the same time, a Court that may in future years be less inclined to interpret ESR provisions broadly, will still be bound to implement an expansive constitution's provisions. Thus it is essential that to provide for greater entrenchment of ESR in Nepali society, they are incorporated comprehensively into the new Constitution.

## VI. Conclusion

Including economic and social rights in Nepal's Constitution is not a panacea for lasting peace or the end of Nepal's political woes, nor indeed will it immediately lead to poverty reduction or the elimination of violations of socio-economic rights. The country faces numerous challenges as a relatively weak and very poor post-conflict state whose ability to ensure it does not become a failed state is often questioned domestically and internationally. After the 2008 elections, there was a period of jubilation and expectancy for commitment to democracy and stability on all sides. Nepal's political stability has faltered numerous times since then—not least when the Prime Minister suddenly stepped down in May 2009 and the Maoists withdrew from government. Major challenges include the integration (or not) of the Maoist fighters into the army, and the return (or not) of land seized by Maoists during the conflict.

The drafting of the constitution is itself a political hurdle. The Constituent Assembly did not meet its May 28, 2010 deadline, and the political body, amidst much

wrangling and controversy, extended the drafting term by one year. These delays, together with general opposition to the coalition government, led to strikes called by the Maoists that shut down Kathmandu as recently as May 2010, and could lead to more strikes if a political consensus is not reached soon. Land reform remains one of the most politically contentious issues in Nepal today. Most major political documents include some commitment to land reform and providing rights to landless tillers, but a clear way forward has not yet been identified or agreed upon.

People working on land reform and land rights in Nepal agree that including ESR in the document is essential to guaranteeing the fundamental human rights of landless people.<sup>1</sup> Moreover, the relationship between those rights, access to land, and political stability is not lost on land rights activists. As one activist noted,

*“There is political instability, but without social justice, the conflict between the haves and have-nots will not end. We’ve had 10 years of armed conflict, and now democracy, so we are hopeful. But without solving these issues of land reform and social justice, there will be no peace.”<sup>ii</sup>*

Including socio-economic rights in Nepal's new constitution will not be sufficient to ensure actual implementation of those rights for Nepalis, especially those who have traditionally been discriminated against. However, inclusion of those rights in the new constitution will provide a meaningful signal to the millions of Nepalis who have been left out of the political process for centuries, and provide one cornerstone for a lasting peace.



<sup>1</sup> Interview with Jagat Basnet, Executive Director, Community Self-Reliance Center, Kathmandu, Nepal (March 31, 2010).

<sup>ii</sup> Interview with Suprasad Bandari, land rights activist, Commissioner, High-Level Land Reform Commission, in Kathmandu, Nepal (March 31, 2010).

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# Transparency in Land Administration

■ Jagat Deuja

## Background

Land administration is an important mechanism to bring about land reform and provide efficient services to the public. Effective land governance plays a critical role in making the government and the political actors accountable to the public. Transparency, accountability and participation of all the concerned stakeholders are key aspects of land governance. This paper attempts to provide a critical snap-shot of the state of land governance in Nepal, and concludes with some suggestions for the changes required.

## Land Governance System in Nepal

### *i. Historical legacy*

The present land administration system of Nepal has a long history. Land survey and measurement began some 1400 years ago, when the then kings started to measure the land and divide it into several categories depending upon the quality of soil with the aim of increasing agriculture productivity (Pokharel, 1991). Nepal used to have an authoritarian feudal ruling system under which the kings considered all national properties and natural resources, including land, as their private properties.

Land was the key source of revenue, and successive rulers sought to use it exclusively for the promotion of their interest and the maintenance of their position of power. They did so by adopting a policy of identifying their closest people to take care of land and collect the taxes. In many instances, the rulers distributed land to the military officers, judges, priests, and other high ranking officials with two primary aims: first, to reduce the burden of the state treasury by giving land against salaries and rewards; and second, to keep the land within the control of the elites and their supporters (Subedi, 2009).

There were other political reasons behind the rulers' eagerness in keeping land under their control. In particular, they did not want these resources to remain in the possession of ordinary people. Since land was the prime source of power at that time, keeping land away from the people was the primary mechanism for keeping the general public away from power.

Consequently, the land administration system was developed to protect the interest of the ruling classes rather than that of the ordinary people. The same legacy continues to date as the administration remains in the hands of landowners who fail to implement most of the progressive

land laws and prevent the administration from serving the interests of poor peasants and land-poor tillers.

### **ii. Institutional structure**

The Ministry of Land Reform and Management is the highest authority in setting land policies and operating land administration in the country. It is supported by various governmental bodies including: the Department of Land Reform and Management, the Department of Survey, the Department of Land Information and Achieve, the Land Management Training Centre, and the Trust Corporation. These national level institutions formulate policies and administration systems, and also monitor the implementation of plans and programmes.

At the district level, there are Land Reform Offices, Land Revenue Offices, Survey Offices and Trust Offices. There are also a variety of local government bodies (75 District Development Committees, 58 Municipalities and 3,915 Village Development Committees) that are entrusted to collect land tax and are responsible for land registration, the latter being critical for individual land transactions (Department of Land Reform and Management, 2007).

There are 83 Land Revenue Offices and 21 Land Reform Offices, 83 Survey Offices and 9 Trust Offices in the district level. The system is paper-bound, and vulnerable to manipulation and rent-seeking by officials, although currently the computerization of records is underway with ADB funds. Property maps and parcel maps are seriously outdated and are available only in old and fragile paper copies, and without coordinates indicated in many cases.

### **iii. Skills, knowledge and attitude**

There are 2,274 employees working within the Ministry of Land Reform and Management and its various structures and bodies. Among them, 135 are officers and the rest are support staff. Since the staffs do not generally see this field as offering desirable career-prospects, most of them try to get themselves transferred to other departments (Subedi and Chhatkuli, 2010).

Besides the surveyors, those who are appointed to vacant positions are not fully trained in the subject matter. Most of these staffs get frequently transferred to and from other ministries and offices. Land administration demands a special set of skills and knowledge, which is severely lacking in the present staff. As they are transferred from other ministries, they are not adequately trained on issues related to land administration, as a result of which they are unable to serve people effectively and efficiently.

Land administration is directly related to power and poverty in the society and is of relevance to both the rich and the poor. However, since many land administration staffs – especially the senior staffs – come from landowner families, they usually share the landowners' perspectives. As a result, they are not much concerned whether their offices have been providing benefits to the poor people.

### **iv. Contradicting policies**

At least 62 acts and 27 policies are directly or indirectly related with land administration. They are contradictory to each other. For example, the Land Measurement Act 1962, the Land Revenue Act 1978 and the Local Development Act 1997 contradict each other (Department of Land Reform and Management, 2007). Similarly the Land Acts and the Forest Acts

contradict each other. Moreover, sometimes the process is so lengthy that one has to go through 30 steps to get it over.

#### **v. Justice system**

The justice system in Nepal is very expensive and slow, making it particularly difficult for the poor to make use of it. Furthermore, since the land administration offices are located in the district headquarters, poor people residing in remote villages are unable to access them. Consequently, poor people are excluded from the justice system.

### **Emerging Issues**

There are several prominent issues related to land governance in Nepal, some of which are highlighted below:

#### **1. Equity, justice and accountability**

The present land holding system is not based on the principle of equity. Those who till the land do not have rights over it, and they lack control over the means of production. The state is responsible and accountable to protect, promote and fulfill the rights of the poor and landless tillers, particularly with respect to the ownership of land resources. However, the situation in Nepal is not very promising. In addition to failing to secure justice for the tiller-producers, the present land policies and administration system do not promote gender justice, nor do they provide any mechanism – such as a land tribunal – to settle land-related cases and disputes. A study has revealed that 72 percent of filed court cases in Nepal are related to land disputes (Basnet, 2008).

There are, one has to say, some reasonably good legal provisions to address some of these issues. However, they do not get implemented due to the personal interest

of the landowners, landowner-influenced land administration, political influence and corruption. The implementation of such legal provisions is very weak. The powerful people continue to grab public lands for private gains. Likewise, productive lands have increasingly been used for housing by private companies that have been snatching poor people's share and stealing their opportunity to engage in farming.

#### **2. Participation and ownership**

Land governance is generally understood as a technical, bureaucratic and administrative matter consisting of surveying, management information systems, record keeping, and land transaction, among others. This perspective has prevailed in the country for a long time. The bureaucracy generally plays a key role in policy formulation and land administration/management, which is usually led by the political processes, and where there is no room for ordinary people to have their say and stake. As a result, the poor tillers and peasants do not have access to the policy formulation process. There is also a lack of publicly available and accessible information about land transactions. Thus, whatever policies are formulated, they ultimately prove to be unfavorable to the poor tillers. There is thus a strong need to make land governance sensitive to unequal power relations existing in the society and, furthermore, to base it on broader governance principles that demand the participation and ownership of concerned actors in relevant processes.

#### **3. Centralised structure and inefficient services**

The present land administration and management structure is completely centralised, thereby failing to provide a mechanism or a system to serve the people



in the local communities. The poor people living in the remote areas of the country do not have access to the government services. Consequently, such services, by and large, have not been effective or efficient. The present process is also cumbersome, demanding that a single individual go through as many as 30 steps to complete the entire process! Clearly, if the land administration system is to serve the poor it should be simplified.

#### ***4. Transparency and responsiveness***

The process of land policy formulation is not transparent enough. As mentioned earlier, it is a largely bureaucratic process, taking place in closed spaces, which bars the general people from knowing the policy formulation process. Similarly, there are several laws pertaining to land administration and management and they are exclusively in Nepali, the official state language. The laws are not adequately printed and disseminated to the ordinary people, many of whom do not understand Nepali. Neither the government nor the political parties have been adequately responsive to the needs and interests of the minorities and the poor tillers.

#### ***5. Capacity and knowledge***

There is a lack of trained human resources and an effective reward and punishment system within the land governance system. The human resources working in land administration have not been trained and they come from other departments without proper induction and knowledge on the subject matter. There is an urgent need of an effective and pro-poor 'land management service' in the civil service. The present recording and management information system is very poor, and does not provide efficient services to the people.

## **Measures Undertaken at Different Levels**

### ***i. Government***

The government has constituted a High Level Commission to furnish ways and means for the implementation of 'scientific land reform'. Likewise, it has taken initiatives in formulating land use policy in consultation with the stakeholders. In addition, the government has also been striving for improving the record keeping system, and introducing new technologies and administrative reforms. This indicates that the government of Nepal is trying to improve land administration by adopting various measures, although this alone may not be enough to reform land governance.

### ***ii. Civil society***

On behalf of the poor people, the civil society organizations have been advocating for a genuine land reform that directly connects with the land governance system in terms of land administration structure, land policy and capacity of staff members. These organizations, along with the tillers' organizations, have established a critical functional engagement with government agencies and are constantly advocating meaningful and effective changes in the land administration system.

### ***iii. Development partners***

Bilateral and multilateral donors have extended some assistance in land administration so far. However, since land reform is a hot political agenda, many of the donors do not dare to support land reform or land governance reform, preferring to provide assistance on technical matters. A few bilateral agencies such as DanidaHUGOU have been supporting local civil society groups in the process of building public opinion and

enabling land-poor people to advocate for the scientific land reform. Similarly, a few INGOs such as Actionaid Nepal, Canadian Cooperation Office, CARE Nepal, Oxfam GB have been supporting the land rights movement led by the tillers and civil society organisations.

### Conclusion

Power relations in Nepal, as elsewhere, always work in the favour of the rich and the landowners, and land governance is also severely influenced by this. At present, an attempt towards reform in land ownership structure and its governance mechanism is underway. Land administration must be made transparent

and accountable. Likewise, land governance must be inclusive, participatory and sensitive to power imbalances. Land administration should be decentralised and powers should be devolved to the lowest level of government i.e. the VDC or DDC levels. At the same time, there is a need for enhancing the capacity of human resources in the areas of technical matters of land management, social justice, equality, transparency, accountability and responsiveness, among others. Equally important is the empowerment and strengthening of the poor tillers in having and claiming their stake in land governance and developing efficient monitoring systems in land administration.

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# Efficient Land Administration for a Just Land Reform<sup>+</sup>

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## Introduction

Land is an important resource in most countries. Accesses to land, security of tenure, and land management have significant implications on development. Land administration is a process of determining, recording and disseminating information regarding various components of land, like land rights, land value, area of land, ownerships with detailed documentation and provision of relevant information (UN, 1996). Land administration is strongly related with land management. It includes different activities related to land such as land registration, land use planning, and land readjustment. Therefore, it is defined as a system of planning and administration methods and technique that aims to integrate ecological with social, economic and legal principles in the management of land for urban and rural development purposes. The main objective of land administration is to meet the changing and developing human needs,

while simultaneously ensuring long term productive potentials of natural resources together with maintenance of inherent environment and cultural functions.

According to the UN Habitat Agenda 21 (1992), access to land and legal security of tenure are strategic prerequisites for the provision of adequate shelter for all. The development of sustainable human settlements affects both urban and rural areas. It is also one way of breaking the vicious circle of poverty. Every government must show a commitment in promoting the provision of an adequate supply of land in the context of sustainable land use policies. Governments at the appropriate levels, including local authorities, should strive to remove all possible obstacles that may hamper equitable access to land and ensure that equal rights of women and men related to land and property are protected under the law. The failure to adopt, at all levels, appropriate rural and urban land policies

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<sup>+</sup> This article is an edited and abridged form of a market survey report compiled by the authors in 2009-2010.

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and management practices remains a primary cause of inequity and poverty in many countries. It is also the cause of increased living costs, occupation of hazard-prone lands, environmental degradation, and increased vulnerability of urban and rural habitats, which affect all the people, especially the poor, disadvantaged and vulnerable groups.

Thus land administration serves various functions in a society. Documents like Agenda 21 of the UN Habitat relate the land issue very much to poverty reduction, sustainable housing, sustainable agriculture and strengthening of the role of vulnerable groups in society like women, farmers, and indigenous groups. Land administration system is not an end in itself. It is a part of a broader land policy. Weak land administration can also be part of the overall problem of governance. Land administration may suffer from a lack of transparency and accountability as a result of confusing regulatory frameworks and complex administrative processes. People who work in land administration may be exposed to the temptation of corruption. Land issues cut across society, and a well-governed land administration system can strengthen local institutions, thereby contributing broadly to improved governance.

### **Role of Good Land Governance**

Land governance is the process by which the decisions about access to and use of land are made. It incorporates the methods of implementing the decision and the approach to lessen the conflict of interest regarding the land issues. Thus good governance includes people's participation and transparency. Weak governance, on the other hand, may result in the following consequences:

- a) *Poverty and social exclusion.* Weak governance affects the poor particularly strongly. They lack the money to pay for legal protection to defend their rights to land. They may not even be aware of their rights or know how to defend them because of illiteracy or marginalization caused by other factors. Weak governance may promote inequality between genders, as poor women tend to be less literate and have fewer resources. It may also promote inequality between social classes, as the rich are able to benefit from the opportunities for self-enrichment while the poor may lose their rights to land and common property resources such as communal grazing areas and forests. The poor who cannot afford the formal legal services are doomed to rely on informal and extralegal arrangements, effectively becoming excluded from the protection and reach of the law. Politically, the consequences can be severe, as grievances may fuel violent conflict.
- b) *Constraints on economic development.* Weak governance and corruption restrict development. They increase risks and reduce incentives for investment, saving and entrepreneurship. The distortion of incentives reduces productive capability.
- c) *Environmental degradation.* Environmental problems arise from weak governance. Poor management of state land, including national parks, results in its abuse and degradation. Informal payments or political influence may prevent the enforcement of regulations to protect the environment. Unsustainable development can take different forms, including illegal logging; illegal hunting; excess water extraction; discharge of pollutants into

the air, water courses, the sea and landfill sites; devastation from mining; and encroachment of areas of biodiversity and national parks.

- d) *Reduced public revenues.* Weak governance reduces the finances available for public services such as health care and education. People may evade taxes by making informal payments to get lower tax assessments. Valuations of properties for tax purposes may be deliberately understated to lower the tax burden. Forged sales values reduce taxes on property transfers.
- e) *Tenure insecurity.* Weak governance reduces security of tenure. Illegal transfers may cause legitimate owners or occupiers to lose their rights. Informal transfers and informal ownership are not protected by law, and the protection offered by customary tenures may be weakened through external pressures, and may not be extended to newcomers. Those who capture the state may use land registration systems to reinforce their claims to land, even when the land has been acquired through land grabbing. Insecure tenure can have adverse effects on labour supply, as a family member may be required to stay at home to protect it rather than to seek work.
- f) *Land disputes.* Weak governance leads to disputes. It provides opportunities for the powerful to claim the land of others, including the state. Rising land values in areas undergoing rapid urbanization are likely to fuel disputes as land use is shifted from agriculture to housing and commercial activities. The poor may not be able to defend their rights against unfair competition and may lose their livelihoods. Where agriculture or mining is introduced into remote areas, there are likely to be conflicts with indigenous populations.
- g) *Weak land and credit markets.* In countries where market economies are being established, weak governance leads to informal land transactions when land registration has high transaction costs.
- h) *Negative social behaviour.* Corrupt behaviour has a corrosive effect on ethics and social behaviour. Observing others behaving corruptly can reduce the sense of social obligation and the willingness to conform to laws. Constitutional guarantees protecting the property of other groups may be ignored or breached.
- i) *Abuse of compulsory purchase.* Large infrastructure projects (e.g. roads, railways, pipelines) may require land from many landowners. If any individual landowner refuses to sell, the project will not be possible. As a result, countries have mechanisms to compel the acquisition of land for public use while ensuring that people receive compensation for the land taken. Weak governance may prevent people from receiving fair or prompt compensation. Compensation might not be paid, or it may be paid at a falsely lower or higher value, or after an unnecessarily long period of time. It may not reach people such as lessees or sharecroppers who have lost access to the land they had used. Compulsory purchase may be a powerful tool for self-enrichment where corruption flourishes. Officials and politicians may use their inside knowledge to acquire land cheaply from the original owners, and then to sell it at higher prices when compulsory purchase takes place. With state capture,

compulsory purchase can be used to deprive opponents of the regime of their legitimate property.

### **Requirements for Efficient Land Administration**

Efficient land administration requires the input of a number of professional services. Professionalism means considerable discretion and judgment. For example, valuers have discretion as to which land parcels are selected as comparables for determining market prices and what adjustments should be made. Close supervision of their work is difficult. Reliance has traditionally been placed on professionals conforming to a code of ethics. However, professionals may take advantage of their position for personal gains. Clients may also apply pressure or offer inducements to gain favourable results.

### ***Need for capacity building***

Good governance cannot be found where there is insufficient capacity to deliver services. Capacity building requires adequate investment in human resources training and staff development, and in technical resources, including buildings and equipment. Adequate human resources means that staff have the appropriate skills and competences, and have access to relevant trainings. This should be so at all levels. It is not sufficient just to train lawyers to approve the registration of land transfers and surveyors to produce cadastral maps. It is necessary to ensure that those who work in any capacity have adequate skills. For example, people in the front office should have the “customer care” skills to respond to callers appropriately and to attend to their needs. Attention should be paid to retaining people who have been trained and ensuring

that morale remains high. A long-term impact requires continuous upgrading of the national education system in order to produce professionals who meet the needs of modernized agencies.

### ***Developing a comprehensive human resource policy***

A human resource policy embraces all aspects of employing people. Land agencies must ensure that the staff have the right skills and attitudes and are motivated to serve. To ensure that people with adequate skills and competences are recruited, organizations should draw up appropriate job specifications, setting out what tasks each particular individual should do, and the skills, qualifications and experience required for the position. Employment should be on the basis of merit with the recruitment process being transparent.

Transparency requires written records of the recruitment process and the creation of an audit trail. Employment must be free of favouritism and nepotism. It should not be discriminatory, neither favouring nor discriminating against applicants, e.g. based on gender, ethnicity, religion, region, political affiliation, disability or age. Similar considerations should apply to promotions and to the remuneration of staff. A land agency that claims to provide an equitable and transparent service to its customers should apply those principles to its own staff. It is not credible for an organization to claim that it behaves in a non-discriminatory fashion towards its customers if it does not do so towards its own employees.

### **Brief History of Land Administration in Nepal**

The practice of land revenue collection, maintenance of land records, distribution

of collected amount to the employees and using the rest of the amount for the state affairs began many years ago. During the *Lichchabi* rule, the administration was regulated by *gaun panchali*. The *Malla* rule introduced the system of purchase of land, land survey and land classification on the basis of productivity. Ram Shah, the king of *Gurkha* Kingdom, started land record maintenance system by dividing the land type into various units like *bale*, *kodale*, *mato muri*, *bijan*, *mana*, etc. Since 1965, land administration has been based on parcel-based deeds registration system. Land records prepared before 1965 were in verbal description in a defined area (*Manja* or *Ilaka*). The system was sporadic and was not uniform throughout the country. After the systematic and compulsory land registration system introduced in 1965, land registration and administration was based on cadastral maps with unique real estate identifier (parcel number) and landownership certificate distributed to the owners. Those basic cadastral data became very much useful and gradually indispensable for civil administration, judiciary, planning, valuation and taxation, local governance and banking or economic activities. The reason of using these land data or information is that there were no other better information bases. Although the cadastre system was focused on fiscal purposes in the beginning, it was gradually used also as legal and multipurpose cadastre. It is felt that the system looks forward towards improved deeds registration system but is dedicated only for land registration and land transfers. Currently, computerization of existing land records and cadastral maps to develop land information system and provide computer-based land administration services is under progress. As the first step, priority is being given to digitalization of survey field books and land records

(*sbresta*). So far, out of 83 district land revenue offices, land records of 11 offices have been computerized, land records of 27 offices are under computerization, while the rest are planned to be completed within a few years.

### State of Land Administration System

Nepal's land administration system, which keeps the information on land and its owners, including tenants, is largely traditional. The existing land administration system requires 15 steps for a single land transaction! Land information is acquired, stored, updated, and retrieved manually in a rudimentary fashion in a paper form, with a low level of precision and high risk of distortion and duplication. Consequently, land records are often not reliable, land disputes are common, land registries are overwhelmed with associated problems, integrated reliable land information is almost impossible to obtain, and land administration services are costly. The land records are handwritten and require verifications from the Land Revenue Office (LRO) and the Cadastral Survey Office (CSO) located separately in two different places. As a result, data often are inconsistent and scattered, and takes a long time to complete a single transaction. Moreover, the people are rarely satisfied with the quality of the services. Because they are in paper forms, major land records are deteriorating due to storage under unsuitable conditions. In addition, there is no provision for recovering many of these records in the event of natural or man-made disasters. There is a severe lack of an overall strategy for managing land records. While a survey map serves the purpose of a graphic index, lack of accuracy and geo-

referencing could inhibit its future role in the spatial data infrastructure.

The current organizational structure is also not ideal from the service delivery point of view. In most districts, the survey office is not situated in the same building as the revenue office. The physical distance between the buildings isolates the two offices geographically, creating a barrier to communication between them and making delivery of service to the public more cumbersome and difficult.

Effective land administration and management are also hampered by the fact that references to the legislation governing land administration are scattered among many laws and are outdated. Proper compliance with and enforcement of the laws are therefore difficult. The laws need to be reviewed to consolidate and update them.

### **Institutional Arrangements of Current Land Administration System**

The Department of Survey (DOS) under the Ministry of Land Reform and Management (MLRM) is responsible for cadastral survey and preparing land records or establishing cadastre. Updating of the cadastral maps is undertaken by district survey offices of the DOS, whereas land registers are updated by the district land revenue offices of the Department of Land Reform and Management (DLRM) under the same Ministry. The Department of Land Information and Archive (DOLIA), which is also under the same Ministry, is responsible for the automation of land records and cadastral maps. Besides this, Trust Corporation exists to handle the administration of trust land. Table 1 lists some of the agencies currently involved

in the protection and conservation of government/public land.

This indicates that there exist several kinds of institutional duplications or overlaps of similar work nature. Private sector consulting firms sometimes perform cadastral mapping, however the documents have to be legalized after checking and inspection from the DOS. So the private sectors feel uneasy and are not motivated to be engaged in this field. Land (Survey and Measurement) Act revised in 1999 has made a provision of licensing qualified surveyors, but is not fully implemented yet due to the lack of adequate regulations and insufficient number of qualified surveyors. It is expected that the system will start soon. Although there are three professional associations currently existing in Nepal, namely, the Nepal Surveyor Society, Nepal Surveyor's Association, and the Nepal Association of Chartered Surveyors, their activities need much coordination and professionalism.

There is a Land Management Training Centre (LMTC) under the MTRM, where surveyors are trained in three levels, namely, Basic Survey Training (after school for one year), Junior Survey Training (I. Sc. level for one year) and Senior Survey Training (B.Sc. level for 16 months). In addition, LMTC has commenced academic undergraduate courses of B.E. in Geomatics Engineering since August 2007 in collaboration with Kathmandu University.

### **Steps Taken So Far**

The efforts during the Tenth Five Year Plan (2003-2007) to improve efficiency and service-orientation of land administration services by applying modern technology could not be achieved due to the lack of



**Table 1: Agencies Involved in the Conservation of Public Land**

Agency	Mandate	Relevant legislation
Local Unit (village development committee or municipality)	Maintain inventory and protect public land	Local Self-Governance Act 1999
District Land Revenue Officer	Register, maintain and protect government and public land	Land Revenue Act 1977 and Regulations 1979
District Survey Officer	Conduct cadastral survey, adjudicate boundaries and register private, government and public land	Land (Survey and Measurement) Act 1963
District Forest Officer	Conserve and protect forests	Forests Act 1982
Chief District Officer	Remove unauthorized possession and impose penalty	Local Administration Act 1971
District Land Revenue Office	Maintain record of government and public land Register land	Land-related Act 1965, Land Revenue Act 1977
Department of National Parks and Wildlife Conservation	Protect and conserve protected government lands	National Parks and Wildlife Conservation Act 1972

Source: Acharya, 2009.

trained staff and funding constraints. The ongoing Three-Year Interim Plan (2007-2010) has an objective to modernize the land administration system by developing a comprehensive land management strategy. The Asian Development Bank (ADB) was requested for technical assistance for strengthening the land administration services in Nepal as a part of the Three-Year Interim Plan.

The technical assistance team of the ADB has recommended for reengineering the existing process for efficient service delivery by establishing cadastral web

portals with central repository through which ownership transfer, parcel divisions, area computation, land demarcation, and information update can be undertaken from one place. Further, a strategy for secured, upgraded and easily accessible land

data has been suggested for the districts where the government has piloted the computerized land record system and digitized cadastral mappings. It has prepared guidelines and an action plan for implementing a land record management strategy, which is estimated to cost around \$12 million. The action plan envisages MLRM to carry out capacity development and policy reforms, and the DLRM, DOS and DOLIA to implement the operational actions.

During the last decade, MLRM has undertaken several efforts and initiatives to modernize land administration and develop institutional transformation. The focus has been to computerize the alphanumeric data of the cadastral parcels, managed by district land revenue offices. The integrated land information system

(LIS) aims to integrate the spatial aspects of land administration data managed by district survey offices. In 2000, DOLIA was established with the objective to manage all aspects of LIS.

Currently, DOLIA is pilot-testing the computerized LIS in four districts with varying degrees of success. Overall, the progress has been very slow. There is a serious lack of trained staff to work on the development and maintenance of the computerized system. In addition, funding shortages have delayed the engagement of contractors to carry out data collection work. The computerized system is still in the basic form and needs to be further developed to handle the volume of work as well as to add more functions. At present, it is only an information system running as an adjunct to the manual system. It needs to be developed into a transaction processing system to aid all aspects of the work flow. In addition, the official procedures for land administration, which were developed to suit manual processing, have to be reviewed, simplified, and standardized to suit computer processing.

The computerization effort to date has been ad hoc and seriously lacks structured planning and clear strategies. There is a serious lack of an overall strategy for information technology (IT) in land administration. There should be an extensive review of the way the department has been managing the resources to build and operate LIS. In addition to lack of clarity in overall goals, cadastral and land information standards (data, process, and technology) are nonexistent and must be defined before further data development. Other matters requiring clearer definition are overall management responsibility for spatial and

attribute data, policies for land information access and sharing between stakeholders, land information fees, data custodianship, and privacy. The value and credibility of the computerized system currently being developed is being put at risk by the lack of attention to the ongoing maintenance of the system. There is no point in developing the system unless there is a serious commitment to keep it continuously up-to date. In addition, proper procedures for backup of the data have not been established. This situation is due in part to the lack of proper coordination between the agencies of MLRM involved in developing, operating, and maintaining the system. The current organizational structure has contributed to these difficulties as it has resulted in overlapping between and unclear responsibilities of the departments concerned with the development and implementation of LIS.

### **Current Scenario in Nepal's Education on Land Administration and Management**

There are a few private and government institutions that are currently producing technicians for different land agencies, both for private and governmental organizations. These institutions are, namely, Kathmandu University, Land Management Training Centre, School of Geomatics and the Geomatics Institute of Technology. Although current coverage in terms of surveying, use of GPS and knowledge of GIS appears to have established a pretty strong base in Nepal with numerous organizations providing trainings and even degree level courses, there appears to be major gaps in all the other aspects of land administration and management. This includes changing dynamics of economic,

social, political, legal and institutional issues related with land administration and management. As Nepal prepares to move to a federal structure where land related issues will play an ever greater role in the day-to-day development issues, the limitations of adequate human resources to deal with different aspects of land administration and development will become even more acute. Sustainable land administration will require sufficient number of trained, skilled and educated human resources.

It is also worthy mentioning here that land resources are related to natural disasters directly or indirectly. Natural disasters like volcanic eruptions, earthquakes, and landslides have a geological land based origin. Similarly, floods, droughts, and storms are directly linked to population and properties located in exposed areas. Careful land use planning, preventive policies for building technologies, mitigation policies and early warning systems can help reduce the damages associated with natural disasters. Improper use of land may lead to soil erosion, soil pollution, water logging, deforestation, urbanization and slum expansion problems. Efficient land management coupled with judicious land use will enable the present generation to get utmost benefit and at the same time attain sustainable development. The overwhelming drive for industrial growth, lack of coordination among the various governmental departments and haphazard planning are some of the factors that contribute to various forms of disasters. In this regard, the knowledge and skills regarding land use management, which can also control haphazard urbanization and its problems, is very crucial.

### **Production of Human Resources for Different Land Agencies**

The existing human resource and professionals/expertise in the field of land administration are mostly graduates from the International Institute for Geo-Information and Science Observation (ITC) and other foreign institutes. Over the years, ITC has trained some 370 Nepalese citizens in the field of land administration and Geomatics, in which majority of the students are from the DOS, MLRM and LMTC. The School of Engineering at Kathmandu University has produced some 1000 graduates so far in the field of engineering. Until now, the LMTC has trained around 5000 survey technicians at different levels. One of the major objectives in the new strategic plan of LMTC is to strengthen its training and education at academic level in the field of geo-information. The alumni of LMTC is making contribution in the field of surveying and mapping throughout the country through institutions such as DOS, DOLIA, International Centre for Integrated Mountain Development (ICIMOD), Forest Department, Nepal Electricity Authority (NEA), Nepalese Army (NA), Nepal Police Department of Mining, Department of Irrigation, National Planning Commission (NPC) and other national and international private organizations. The School of Geomatics has produced 150 lower level technicians (surveyors), out of which 20 percent are employed in government organizations, and 80 percent are either in private sectors or are self employed. Similarly, in diploma level 64 undergraduate technicians have been produced, out of which 20 percent are involved in higher education (mostly bachelor degree in civil engineering). However, none of these organizations is

providing the course in the domain of land administration and management, which, as argued above, is urgently needed in Nepal at this hour.

### **Conclusion**

Land administration is a discipline that integrates other disciplines related to land issues from legal, social, economic, technical, planning and management perspectives. Although the strengthening of land administration system is high in the agenda of government, there is currently no institution which is providing specific knowledge and trainings in this field. In this context, there is an urgent need to meet the changing and ever expanding human needs, while simultaneously ensuring long term productive potentials of natural resources, as well as maintaining inherent environment and cultural functions. Land governance is a process by which the decisions about access to and use of land are made. The consequences of weak land governance are poverty and social exclusion, environmental degradation, reduced public revenues, tenure insecurity, and disputes. For good land governance, efficient land administration and management is required, and for efficient land administration skilled and educated professionals are required. Good governance in land administration is effective, competent and sensitive to its context. It cannot be found where there is insufficient capacity to deliver services. Capacity-building requires adequate investment in human resources training and staff development, and in technical resources. Adequate human resources means that staff have the appropriate skills and competences, and have access to relevant trainings. This should be at all levels. Land agencies must ensure that the staff

have the right skills and attitudes and are motivated to serve the people. To ensure that people with adequate skills and competences are recruited, organizations should draw up appropriate job specifications, setting out what tasks each particular individual should do, and the skills, qualifications and experience required for the position. To fulfil all these requirements, educated, trained and capable human resources are very important.

The present land administration system of the country is based on conventional cadastral maps of lower accuracy. The condition of maps, field-books and record books are not good. It is currently paper based. Although it is now slowing being oriented towards computerized system, majority of the existing staff are under qualified, non-land professionals and computer illiterate. Recognizing this long felt need of developing adequate and capable human resources for land administration and management, Kathmandu University, under the collaboration with ITC, is considering starting diploma and Msc levels of programmes on land administration and management in the near future. In this regard, the university recently conducted an in-depth market survey regarding the necessity of and demand for such programmes. The response from the market, which included most of the government and non-government organizations working on issues related to land in Nepal, was overwhelmingly in support of such a programme. Currently, further details are being worked out to officially launch the programme. If indeed this programme gets started, it will be one step closer towards answering the needs of the nation regarding efficient land administration and management. This in

turn will, it can be assumed, make easier the path towards a just land reform this country so badly needs.

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# Debate over Property Rights

■ Sagar Raj Sharma

One of the most intensely debated concepts in today's economic debate, both internationally and nationally, is the concept of property rights. For decades social critics in most of the developing countries and indeed in the Western world have argued that "property" rights too often overshadow "human" rights, with the result that people are treated unequally and have unequal opportunities. They argue, especially in developing countries, that the existing inequalities are often the result of property rights getting precedence over human rights, which allows the haves to get richer at the cost of the have-nots.

Inequality exists in any society. Be it the Western world or the Eastern, modern or traditional, rural or urban, one finds inequalities of different forms and nature in all these places. What then is this 'conflict' between property rights and human rights?

A property right, in essence, is the exclusive authority to determine how a resource is used, whether that resource is owned by government or by individuals (Alchian, 2008). But it also has two other attributes in addition to determining the use of a resource. One is the exclusive right to the services of the resource. Thus, for example, the owner of a piece of land with complete property rights to the

land has the right to determine whether to rent it out and, if so, which tenant to rent to; to use it herself; or to use it in any other peaceful way. That is the right to determine the use. If the owner rents out the land, she also has the right to all the rental income from the property. That is the right to the services of the resources (the rent).

Additionally, a private property right includes the right to delegate, rent, or sell any portion of the rights by exchange at whatever price the owner determines (provided someone is willing to pay that price). If person A is not allowed to buy some rights from person B and B therefore is not allowed to sell rights to A, private property rights are reduced. Thus, the three basic elements of private property are (1) exclusivity of rights to choose the use of a resource, (2) exclusivity of rights to the services of a resource, and (3) rights to exchange the resource at mutually agreeable terms (Ibid.).

Those who advocate the principles of capitalism consider private property to be essential for the construction and sustainability of a just and prosperous society. Private ownership of land ensures that the land will be put to productive use and its value protected by the landowner. If the owners must pay property taxes, this forces the owners to

maintain a productive output from the land to keep taxes current. Private property also attaches a monetary value to land, which can be used to trade or as collateral. Private property thus is an important part of capitalization within the economy.

Some also say private property gives its owners stability, as well as a vested interest in the enforcement of property law. Citizens that own private property have a vested interest in fighting corruption of government officials as in cases where corruption is a direct threat to private property and the laws that govern maintaining private property. This might be called the liberal perspective on private property.

Private property rights do not necessarily have to conflict with human rights. Private property rights are the rights of humans to use specified goods and to exchange them. Any restraint on private property rights shifts the balance of power from impersonal attributes toward personal attributes and toward behavior that political authorities approve. That is the fundamental reason for preference of a system of strong private property rights: private property rights protect individual liberty. This was recognized even in India where, in 2008, the Supreme Court gave a verdict on the dispute over property rights in which it said that “the right of property is now considered to be not only a constitutional or statutory right but also a human right” (<http://www.indianexpress.com>, 2008).

However, there is also another school of thought on private property. It is the socialist perspective, which defines private property as the simple relation of the individual to the natural world in which

their individuality finds objective expression. Private property finds its ultimate expression only in the relation of wage-labor and capital (<http://www.marxists.org/glossary/terms/p/r.htm>). In general, socialists view private property relations as limiting the potential of productive forces in the economy. Private property becomes obsolete when it concentrates into centralized, socialized institutions based on private appropriation of revenue until the role of the capitalist becomes redundant, necessitating either public ownership or social ownership by the employees.

In political and economic theory, the distinction between private property in personal goods and private property in the means of production is important. In general, personal property is part of your person and includes property from which you have the right to exclude others. From the socialist perspective, private property refers to capital or means of production that is owned by a business or few individuals and operated for their profit. Personal property refers to tangible items and possessions individuals own, such as consumer goods. From the Marxist perspective, private property is a social relationship, not a relationship between person and thing. In capitalism there is little distinction between personal and private property.

Nepal’s take on this issue will depend entirely on the philosophy of the new constitution that is being drafted and debated currently. Whichever principle we ultimately choose to be guided by, the details will have to fit into that philosophy. The issue of property rights cannot be considered in isolation. It is only a small, albeit very significant, part of a much larger and comprehensive whole.

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