Land and Land Tenure Security in Nepal

(Country Study: Nepal)



- Community Self Reliance Centre (CSRC)
- Land Watch Asia (LWA)
- Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)

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EXECUTIVE SUMMARY

Nepal, home to 23 million people, is one of the World's poorest countries with half the population living below the poverty line. The dramatic topography renders 80% of the land uncultivable yet three quarters of the population is engaged in agriculture for their livelihood; one third of which are tenants and landless farmers whose livelihood is solely dependent upon the land, which they are excluded from owning.

Land rights are of particular importance in Nepal as they are intrinsically linked with a whole gamut of social and economic liberties; from education to electricity, landlessness is a powerful excluder. Land deprived people are highly vulnerable to exploitation by unscrupulous land owners often leading to unsavoury practices and ultimately a life devoid of dignity.

For over 50 years, successive governments, politicians and authority figures have promised 'Land to the tiller' but a genuine land reform process has not even begun. The entrenched power structures in Nepal have consistently favoured land owners and the land owning class to the detriment and exclusion of poor tenants and landless farmers. The inequality of land access and distribution is borne out by statistics which show that 5% control 37% of arable land and the ruthlessness of those in control means on average one tenant or landless farmer is evicted every day.

There was renewed hope with the return of democracy in 1990 but the democratically elected governments persisted with the same landlord-orientated land policy; the power dynamics had not changed with the rulers and policy makers still drawn from the landed high castes.

Land reform programmes have consistently failed to deliver on their commitments, with ineffective policies being backed by political inertia. Although the Land Act of 1964, the first of its kind, ended the long tradition of offering land grants to nobles and other state functionaries its effect was superficial; complex administrative and legal procedures ensured very little land was redistributed and was perhaps merely a ploy to silence the growing peasants' movement. The Act has since been amended on five occasions with the fourth amendment entitling tenants to 50% of the land they till. Once again the bureaucratic process coupled with an impractical six month deadline for applications (after which a tenant lost any tenancy rights they had) did more to ensure that tenants were further disenfranchised. The final amendment proposed new land ceilings to limit the amount of land any one landowner could hold; this was promptly challenged by landlords in the Supreme Court and overturned as being 'unconstitutional'.

The land rights movement began as far back as the 1950s with a handful of agitating tenant farmers and has since grown to become a considerable voice of over a million people. Under the umbrella of the National Land Rights Forum, grassroots pressure campaigns operate in tandem with lobbying and advocacy by civil society groups and international organisations which are increasingly linking land rights with the basic human rights of subsistence, protection, participation and identity. The land rights movement focuses on educating, empowering and mobilising tenant and landless farmers to claim their rights and press for inclusive policy-making and a reformed decentralised land administration.

Agricultural productivity is a prevalent issue in Nepal with the agricultural sector struggling to keep pace with ever increasing demands. Land reform is seen by many as a vital pre-requisite for improving productivity; by granting farmers a stake in the land they till and by extension access to capital to finance improvements this debilitating trend can be reversed. Land reform would also tackle the widespread deleterious practices of land fragmentation and absentee landlordism.

An odious cycle exists in Nepali society whereby those who rank low in social status are denied access to land which subsequently precludes them from participating in socio-political decision-making; a recipe for the unrelenting and unfettered exploitation which has occurred to date.

2008 has witnessed high drama in the political and national scene resulting in a Maoist government leading a federal secular republic. There is an historic opportunity to achieve constitutional land reform and press for a guarantee of rights for tenants and landless farmers, not just in principle but with concrete provision for implementation. Land reform was prominent in the Maoist's manifesto but it remains to be seen whether they have the political strength and willpower to honour their commitments.

1.0 SCOPE, LIMITATIONS AND METHODOLOGY

Land Watch Asia and CSRC jointly conducted this country study of 'Land and Land Tenure Security' in Nepal with the following aims:

- To assess the policy and the legal environment regarding access to land and land tenure security.
- To analyse past contributions and existing efforts in government, the private sector, donors, civil society and social movements in addressing existing land issues and advancing the process for accessing land and land tenure security.

This study paper is presented in four main sections; background and context, legal and policy framework, key actors and stakeholders and opportunities and strategies to advance land reform.

The first section provides the background to land ownership, land use and land and tenant related issues assessing the major developments with reference to relevant power structures and the State. The second section details the legal and policy framework up to the present day, assessing implementation, impact and commitment. The third section considers the key actors in the process from tenant farmers through to international global institutions discussing initiatives achievements and impediments to land and land tenure security. The final section addresses the risks, challenges, conditions and opportunities to advance land reform.

This study employed a comprehensive participatory process with consultations at the community level and with government policy makers. Regrettably, resource limitations precluded a more extensive countrywide study. This document has made full use of existing research to help provide an up to date and authoritative guide to 'Land and Land Tenure Security in Nepal'.

2.0 STATUS OF ACCESS TO LAND AND LAND TENURE SECURITY

2.1 The Country

2.1.1 Geography

Land-locked and sandwiched between two neighbouring giants, China and India, Nepal is a land of enormous geographical diversity. It stretches across 147,181 km^2 and is divided into three distinct ecological zones running East-West; the Terai in the South, the hills and mountains in the middle and the Himalayas to the North. Over 600 rivers and streams flow from North to South and dissect the landscape into hundreds of small hills, naturally isolating communities from one another. The unique and varied topography, whilst undoubtedly beautiful, renders 80% of the land uncultivable; this places even greater emphasis and importance on the way the small percentage of cultivable land is managed and utilised.

2.1.2 People

Nepal is home to nearly 23 million people (2001 census), comprising 100 ethnic groups (59 officially recognized), each with their own distinct language culture and life style. Nepal is politically divided into five development regions, 14 geographical zones, 75 administrative districts, 58 municipalities and 3,915 VDCs. Each region displays huge diversity in human settlement patterns, ethnicity, land distribution, resources and levels of economic development.

Although Nepal is officially a secular state, the society is largely governed by a rigid hierarchical caste system that places *Brahmins* at the top and *Dalits* at the bottom. This framework is closely linked with the system of governance; the so-called upper castes, the *Brahmins* and *Chhettris*, have always occupied the positions of power and privilege. The so-called lower castes have been subjected to

gross discrimination and have been deprived of many of their fundamental human rights.

Nepal's marginalized groups who are deprived of land, despite working on it for their livelihood, include the following: *Kamaiya* (freed bonded labourers), landless peasants, squatter settlers, indigenous peoples, *Haliya* (ploughmen), *Haruwa/Charuwa*, *Gothalas* (cattle herders), *Dalit*, *Bhariyas* (porters), *Badi/Badini*, *Chepan, Mushahar, Santhal, Jhangadh, Munda, IDPs* and *Deukis.* The single largest exploited group are women as a discriminatory attitude towards this half of the population pervades the whole of Nepali society.

The rigid hierarchical caste system which assigns occupational roles further exacerbates the situation by marginalising and alienating certain castes from land. The lowest rungs on the caste ladder are expected to occupy positions 'below' farming' however they cannot sustain a living in these roles and are forced to till the land as tenants under conditions imposed by landlords.

2.2 The Role of Land in the National Economy

Agriculture is the mainspring of Nepal's economy. It provides a livelihood for the majority of the population, employing four-fifths of the total labour force and accounting for over 80% of the export sector (NESAC 1998). The agricultural sector contributes 39.2% of the county's GDP.

Population growth is increasing rapidly at a rate of 2.6% per annum, outstripping growth in agricultural production; this worrying trend is exacerbated by prevailing land policies. 38 districts currently have a food deficit requiring them to import basic foodstuffs. When tenant farmers are denied a stake in the land they farm they will clearly have less incentive to maximise production. Their landlessness further impacts productivity by precluding access to capital for financing agricultural improvements. Consultations with tillers have shown that they have the knowledge and possess the necessary skills to

increase production but are reluctant to invest themselves in a climate where they could be evicted at any time.

Another serious threat to agricultural productivity is the phenomenon of absentee landlords; these are people who choose to leave agricultural land barren and keep it purely as a status symbol.

Agricultural production forms the bedrock of the national economy and consequently improvements in this sector will catalyse growth in other sectors. In addressing the problems which stymie agricultural productivity, land reform will have a central role to play in the future economic development of Nepal.

2.3 Poverty, Power and Access to Land

Categorised as one of the 50 least developed countries, Nepal ranks 138th out of 177 countries in the Human Development Index (UNDP 2006) and falls into the UNDP category of 'low human development'. Nepal's citizens have an average life expectancy of 62 years and an annual per capita income of USD 490.

Government statistics show that 31.8% of the population is living below the poverty line; non-government studies put this figure above 60%. The degree of poverty varies between communities and geographical areas with some experiencing levels as high as 85%.

The Human Development Report (UNDP 2004) states that 29% of rural households do not own any farmland. With an average household size of 5.45 members (2001 census) this equates to over 5.5 million landless people.

Land has always been the prime source of socio, economic and political power in Nepal and while it enables a few wealthy landlords to wield considerable influence it also ensures that the landless and near landless are alienated and marginalised from society.

Nepal's institutions have been shaped by these huge inequalities in the distribution of land and those institutions continue the *status quo*. It is unsurprising that a disproportionately large number of

Dalits, ethnic minorities and women belong to the landless and near landless groups of society.

Having no land of their own, millions of people are at the mercy of powerful farmers and wealthy landlords; they are forced to sell their labour for negligible wages in a state of bondage or near-bondage. These vulnerable people are generally uneducated and illiterate with no hope of freeing themselves from this exploitation. Landlessness affords no status in the community and disenfranchises millions from their basic human rights. Without the possession of a land certificate people are denied access to basic government services such as banking, electricity, telephone connection and potable water. The landless are further victimised by non-government services, being unable to keep livestock and prevented from accessing community forest land.

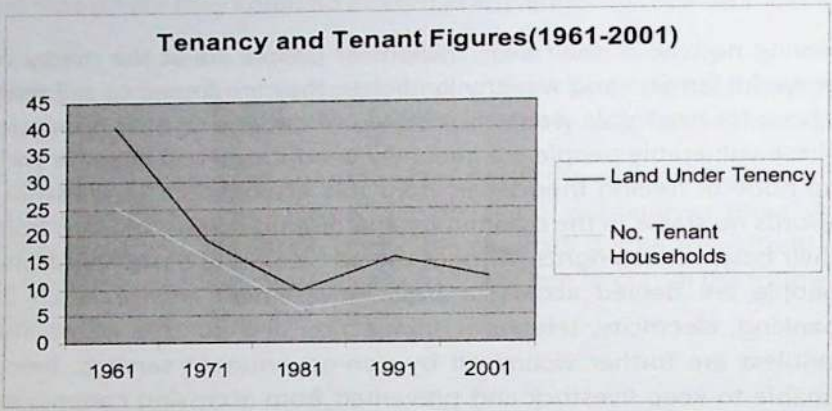
Millions of people in Nepal are trapped within this vicious cycle of poverty which does not benefit them, their communities or the national economy.

2.3.1 Denial of Rights

A large section of the farming population is denied basic tenancy rights. Badal High Commission for Land Reform 1995 states that. In 2000/01, the Department of Land Reform and Management conducted a sample survey in 35 districts (2000/01) which revealed that there are 266,261 registered tenants as eligible claimant of tenancy rights but they have not been able to do so yet. It is estimated that around 1 million poor household (majority of them are *Dalits*) have been deprived from their legitimate rights over land resources.

The below table shows the clear trend of land under tenancy falling as increasing numbers of tenant farmers are evicted.

Table 1: Percentage Decline in Tenancy and Tenant figures (1961 - 2001)



Source: Ministry of Land Reform and Management (2006)

2.4 A Brief History of Land Reform in Nepal

During the reign of Prithivi Narayan Shah (1742-1774) land tax was a vital source of revenue, a key factor in sustaining the regime, and the land management system was operated in such a way as to maximise and control this. Royal favourites were given the responsibility of managing the land and subsequently paid revenue to the state. Members of the royal family could give land, known as *Birta,* to their favourites and relatives. In this way government officials and staff, including high-ranking military, often received land in lieu of a salary. Land which was under the collective ownership of ethnic communities was also distributed as *Birta* and *Jagir* to the ruling class.

This feudal system deliberately precluded ordinary people from owning land and ensured their continued position as servants who work the land. Non-farmer elites began to accumulate considerable land holdings as a form of security and status which precipitated the well-established class structure of landlordism today.

Nepal's lands were managed on this ad hoc basis subject to capricious rulers, until the first Land Act was introduced in 1964. In response to the fledgling land rights movement, initiated by tenant

farmers, the autocratic Panchayat regime introduced the Act with the aim of "showing a human face". The Act imposed a cap on land tax, assured loans to tenants and put a ceiling on land holdings. This ended the practice of offering vast land grants to royal favourites but failed to redress the entrenched inequalities in land ownership and distribution. The Land Act neither evolved scientifically nor was implemented honestly.

At this time 65% of farmers owned 15% of the land whilst 3.7% of land holders held 39.7% of the land. The Land Act affected 9,136 land owners, with 50,580 hectares of land recorded as above ceiling. Only 32,331 hectares were acquired by the government and of this only 64% was redistributed.

Eight years after the Land Act was implemented the picture had barely altered with 9.9% of land holders owning 60.8% of the land. Three decades later almost 28 percent of farming households were found to be unregistered tenants. After four decades and a number of amendments to the Land Act there are more than 450,000 tenant families who are not registered; many of those who are registered have been unable to exercise their land rights.

Many landowners today persist in controlling more land than the legal maximum. Despite land reform and the various programs to bring about changes to the traditional feudal structure there has been an overriding lack of political commitment and sincerity in the process.

2.5 Land Ownership in Nepal

2.5.1 The Land Use Pattern

Land use in Nepal necessarily adapts to the diverse topography. Based on the agricultural census of 2001-02, 94.1% of total land holdings are agricultural land, this equates to 24.98 million hectares. The same report recorded a 69% decrease in woodland and forest (from 108,800 ha to 37,200 ha) from 1991 to 2001. Approximately 20-25% of cultivable land remains fallow as a result of absentee landlords and conflict.

Table 2: Pattern of Land Utilization (1961-2001)

Land Use	1961	1971	1981	1991	2001
Agricultural Land	1626.4	1592.3	2359.2	2392.9	2497.7
Arable Land	1591.9	1567.0	2287.5	2324.3	2357
Land under Temporary Crops	1550.5	1537.1	2250.2	2284.7	2326.1
Other Arable Land	41.4	29.9	37.3	39.7	30.9
Land under Permanent Crops	12.2	15.0	29.2	29.4	117.5
Land under Permt Pasture	22.3	10.3	42.5	36.9	19.8
Ponds	n.a.	n.a.	n.a.	3.9	3.5
Non-agricultural Land	59.0	61.8	104.5	205.0	156.4
Woodland and Forest	13.8	4.7	15.0	108.8	37.2
Other Land	45.2	57.1	89.5	96.2	119.2
Total Area of Holdings	1685.4	1654	2463.7	2597.4	2654

Source: CBS, National Sample Census of Agriculture 2001/02

Forest and woodland is recognised as common property but this has not prevented it being appropriated for agriculture and housing by the State and special interest groups. The steep decline in forest and woodland can be attributed to the following causes:

- The government settling ex-military servicemen along the border area with India.
- Terai forest conservators legalising occupations by spontaneous squatters.
- Land gifts to certain individuals, granted by royalty and government.
- Re-settling "political victims" who have suffered economically because of their involvement in politics.
- The autocratic *Panchayat* regime (1960-90) which helped precipitate large scale land encroachment.
- Corrupt government officials seeking personal gain.
- Terai landlords evicting tenants from their land to avoid tenancy rights when the Land Act 1964 was introduced.

- The continued expansion of the professional landless class in the Terai.
- Increasing highway construction accelerates land encroachment by spontaneous settlement.

2.5.2 Land Holding and Land Fragmentation

According to Nepal's National Planning Commission (1998), over 70% of landholding farmers own less than one hectare of arable land. The size of land holdings is a critical issue in relation to productivity and the equity of distribution.

The average land holding size in Nepal is approximately 0.8 hectares. This is subject to regional and environmental variation. The smallest holdings are in the middle hill regions with an average of 0.66ha; the largest are in the Terai with 0.94ha; the mountain region has an average land holding of 0.73ha. Average holdings of women are 35% smaller than those operated by men.

The figures in Table 3 confirm the marked disparity in the distribution of farmland, with 25% of land holders controlling more than 60% of the total farmland and a tiny fraction (0.75%) accounting for all holdings in excess of 5 ha.

Table 3: Size of Land Holdings in Nepal (2001)

Size of Holding	No. Holdings	Land Area (%)	Average Land Size (Ha)
Holdings without Land*	26,700	0.79	118.2
Holdings with Land	3,337,439	99.21	2,653,918.9
less than 0.1 ha	260,547	7.74	13,241.6
0.1 Ha to under 0.2 Ha	346,113	10.29	49,864.2
0.2 Ha to under 0.5 Ha	972,259	28.90	327,060.8
0.5 Ha to under 1Ha	915,674	27.22	641,659.3
1 Ha to under 2 Ha	588,649	17.50	791,965
2 Ha to under 3 Ha	157,026	4.67	371,223
3 Ha to under 4 Ha	51,573	1.53	175,690.5

4 Ha to under 5 Ha	20,241	0.60	89,257.5
5 Ha to under 10 Ha	21,575	0.64	139,750.2
10 Ha and over	3,783	0.11	54,206.7
Total	3,364,139	100	2,654,037.1

Source: CBS, National Sample Census of Agriculture 2001/02

* People who have encroached on public land

It is common knowledge that, above a certain level, productivity expresses an inverse relationship with farm size. The redistribution of land from large scale landowners to landless tenants is not only required to redress the entrenched unethical imbalance but is also an economic necessity to tackle the nation's food shortage.

Land fragmentation refers to the situation where an owner's land holding does not consist of a single unified piece of land but rather two or more parcels which are not adjoined, being scattered in different locations. Fragmented land holdings often comprise very small parcels.

Land fragmentation has its roots in traditional Hindu inheritance practices whereby the parental estate is equally divided between the sons. This results in land being sub-divided and redistributed in ever smaller parcels; in many cases these parcels are too small to be agriculturally viable; even the smallest holdings of 0.1 ha are plagued by this phenomenon.

Nepal's land holdings are highly fragmented with an average of more than 3 parcels per holding and 4 per ha. As might be expected the larger the holding the greater the number of parcels. The most parcels (7.5) occur in holdings of between 5 ha and 10 ha.

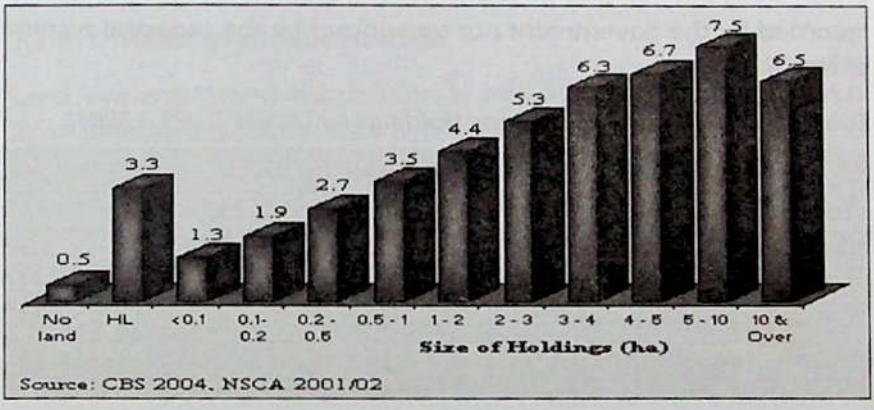
Land fragmentation poses a major obstacle to modernising and commercialising the agricultural sector. Transporting heavy machinery to a dozen scattered parcels of land is just not cost-effective. Even under basic farming techniques it is still relatively inefficient to farm land which is fragmented. An example of the negative impact of fragmentation was seen during the sallow tube wells irrigation scheme in the Terai; this project would have proved

far more successful had it not been uneconomical for many landholders with fragmented holdings to implement.

Land consolidation is the obvious antidote to high levels of fragmentation. Consolidating a land owner's holding into a single location is by no means a simple task but it can be achieved by sale and purchase and through mutual exchange. Land consolidation has been successfully achieved elsewhere, most notably in Taiwan where agricultural productivity increased by 32% as a result.

Fragmentation is widespread and endemic, to ensure that it does not continue unabated, land registration will need to be regulated to prevent or discourage land entitlement below a certain minimum holding size.

Figure 2: Average Number of Parcels by Size of Holding



2.5.3 Present Land Tenure System

State ownership was the traditional form of land tenure in Nepal; the land simply belonged to the state and its rulers. After 1946, six major forms of land tenure were recognised: *Raikar, Birta, Jagir, Rakam, Kipat and Guthi* (see Appendix 3 for more detail on each). All except *Guthi* were subsequently converted into *Raikar* and these are the two that officially remain today.

Within *Raikar*, there are three further kinds of tenure: land which is cultivated (or left fallow) at the owner's discretion; land which is

contracted or leased to another party; land which is tenanted and tilled by tenant farmers. In all cases the owner is liable for taxation. The lease or contract system operates within specific conditions agreed between the leaser and the lessee; usually this contract involves a 'share of produce' between the land owner and the cultivator. This tenancy based tenure uniquely allows for the condition of 'dual ownership' as both the land owner and the tenant are seen to exercise control over the land. Tenancy based tenures also expose tenants to various forms of exploitation. For instance, fear of eviction forces the tenant to submit to unfair rental conditions.

Informal land tenure continues to exist in the form of State-owned and public land occupied by landless people, conflict victims, rebel groups and bonded labourers. It mostly occurs in urban and semi-urban areas but can also be found in rural areas. It is neither officially recorded by the government nor recognized by the cadastral system of Nepal.

Table 4: Number and Area of Land Holdings by Tenure (1991 – 2001)

Land Tenure	1991	2001	% Change
Total number of holdings	2,703.9	3,337.4	23.43
One form of tenure	2,303.3	2,939.6	27.63
Owned	2,239.1	2,896.2	29.35
Rented from others	47.0	35.5	-24.47
Other tenure form	17.3	7.9	-54.34
More than one tenure form	400.6	397.9	-0.67
Total area of Holdings	2,597.4	2,653.9	2.18
One form of tenure	2,152.7	2,241.1	4.11
Owned	2,109.5	2,212.8	4.90
Rented from others	36.1	26.3	-27.15
Other tenure form	7.1	2.0	-71.83
More than one tenure form	444.7	412.9	-7.15
Owned	252.6	204.5	-19.04
Rented from others	185.1	204.2	10.32
Other tenure form	7.0	4.2	-40.00

Source: CBS, National Sample Census of Agriculture 2001/02

Dual ownership has resulted in many practical problems; it inhibits land access and security and reduces agricultural productivity. Dual ownership of land was abolished by the fourth amendment (1996) of the 1964 Land Act; however it is still a reality for 13% of land holders operating 8.7% of the agricultural land, with many still operating a 'Share of Produce' rental arrangement. It is likely that the real figures for dual ownership are much higher.

The process of ending dual ownership has been hampered by the fact that 85% of tenants do not have the necessary documentation to enact their claim for land rights.

There is huge gender disparity between the number of male and female landholders. Only 8.1% of land holders are female, although the proportion is gradually improving (CBS, 2004), and relates directly to the lower number of female household heads.

2.5.4 Ownership and Distribution

Land ownership and distribution is heavily weighted in favour of large landowners. More than two-thirds of land holdings consist of less than one hectare but account for only 30% of the total. Conversely 1.5% of holdings are 5 hectares and above and amount to 14% of the total farm area. 60% of the holdings in the hills and mountains own less than half of the total land.

Table 5: Number and Area of Holdings by Size 2001-02

Size of holding (In hectares)	No. Holdings (1000s)	Holdings %	Cumu-lative (%)	Area (1000 Ha.)	%Area Ha
Holdings with no land	26.7	0.79	0.79	0.1	0.00
Holdings with land	3337.4	99.211	100.00	2653.9	100.00
Under 0.1	260.5	7.74	7.74	13.2	0.50
0.1 - <0.2	346.1	10.29	18.03	49.9	1.88
0.2 - < 0.5	972.3	28.90	46.93	327.1	12.32
0.5 - < 1.0	915.7	27.22	74.15	641.7	24.18
1.0 - < 2.0	588.6	17.50	91.65	792.0	29.84
2.0 - < 3.0	157	4.67	96.32	371.2	13.99
3.0 - < 4.0	51.6	1.53	97.85	175.7	6.62

4.0 - < 5.0	20.2	0.60	98.45	89.3	3.36
5.0 - < 10.0	21.6	0.64	99.09	139.8	5.27
10.0 and over	3.8	0.11	99.21	54.2	2.04

Source: CBS, National Sample Census of Agriculture 2001/02

A regional analysis of land distribution indicates that the proportion of landless holdings is higher in the Terai compared with the hills and mountains.

Table 6: Regional Analysis of Land Distribution before and after the 5th Amendment of 1964 Land Act

Regions	Before 5th Amendment of 1964 Land Act			After 5th Amendment of 1964 Land Act			Recommended (HLRLC 1995)
	Farmland	Homestead	Total	Farmland	Homestead	Total	
Terai and inner Terai (plain area)	16.7 (25)	2.0 (3)	18.7 (28)	6.7 (10)	0.67 (1)	7.37 (11)	3 (4.5)
Kathmandu valley	2.5 (50)	0.4 (8)	2.9 (58)	1.3 (25)	0.25 (5)	1.55 (30)	1 (20)
Rest of Nepal (hills and mountains)	4 (80)	0.8 (16)	4.8 (76)	3.5 (70)	0.25 (5)	3.75 (75)	
Mountains							4 (80)
Hills							2 (40)
City area							
Kathmandu, Bhaktapur and Lalitpur cities							0.5 (10)
Municipalities, District headquarters and other areas developing towards cities							1 (20)

Source: LBMB, 2004 - Land Act 1964; HLCLR 1995)

Note: All figures are per family. Figures in parentheses are in *Bigha* in case of Terai and Inner Terai and in *Ropani* elsewhere. Conversion: 20 *Ropanies* = 1 hectare, 1.5 *Bigha* = 1 hectare.

Direct intervention to facilitate land access is one of the options available to redress the inequity of land distribution. Indeed, land redistribution and tenancy contract regulation are favoured on grounds of both equity and efficiency.

2.5.5 Linkage between Land and Forest

According to the Department of Forest Resource Survey (DFRS), Nepal has a total forest cover of 5,828,000 hectares or 39.6% of the total land area. Analysis of the distribution shows 5.6% is in the high Himalaya, 60.1% in the mountain region and 48.1% of the forest is in the mid-hills. 70.4% is in the churiya and 23% in the terai. There is some overlap between these geographical regions.

The forest was nationalised in 1957 and the management and protection of the forest was brought under government control. The Forest Department became increasingly active and local people found themselves excluded from the system; people who had occupied the land for generations but had no documentary proof of ownership. From 1963-1979 36% of forest land was destroyed and converted into agricultural land, with landlords continually encroaching and illegally appropriating forest land for personal use.

2.5.5.1 Conflicts in Land and Forest Management System

Forest area has been encroached upon by the army, security forces, landless people, People's Liberation Army (Maoist), government projects and development projects such as road building and electricity installation. In some parts, Community Forestry User Groups (CFUG), a federation of community forest users established in 1991, protested against forest encroachment by landless people and freed *Kamaiyas*. There is a constant battle between CFUGs and landless people over the issue of forest encroachment. CFUGs support the landless people's right to land ownership but they do not want community forestry land to be used for this purpose.

CASE STUDY 1: Displaced communities in Krishnapur, Bani and Kanchanpur districts

4,414 Households were displaced during the formation and subsequent boundary expansion of the Sukhla Phata Wildlife Reserve. They did not receive compensation nor any offer of relocation. According to the Reserve Victim Struggle Committee 1,000 households have now received land but the remaining 3,414 are living in different Village Development Committees (VDCs) in 13 camps. Despite rallies, meetings and even the death of one protester the reserve authorities remain quiet on the issue.

A total of 90 displaced families have been living in camps in Krishnapur since 2001; victims of fire and flood.

CASE STUDY 2: *Muktakamaiyas* living in Krishnapur-2, Kanchanpur

There are around 120 *Muktakamaiya* households, displaced and living in Krishnapur-2, Kanchanpur, on government owned land, having arrived there in 2003 from Dekhatbhuli. According to Indra Bahadur Deupa, a *muktakamaiya*, he has changed his houses four times. At first he was living inside the reserve with his parents who worked their landlord's fields, after the formation of the reserve, they were relocated, his parents, being *kamaiyas*, had no lands and were displaced from the reserve and forced to settle in Beldandi VDC, from there they were moved to Pipladi VDC, then on to Dekhatbhuli and finally to Krishnapur. They have since become *Muktakamaiyas* and are completely reliant on earning a daily wage to secure their livelihood.

Source: CDO Chitwan Research Report 2007

2.6 Issues Relating to Land Ownership

Landlessness has a considerable negative impact on the socio-economic development, cultural identity, political participation and overall human rights of a person in Nepal. Land ownership is closely tied to citizenship and citizenship is closely linked with participation and social services.

2.6.1 Unregistered tenants and Low Productivity

The Land Act of 1964 originally stated that those who tilled a landlord's land for one year or more and possessed two important documents, a tenancy contract with the landlord and a receipt of grain payment, were eligible to claim tenancy rights. Tenancy rights equate to the ownership of half of the land the tenant tilled.

In 1996 the fourth amendment to the 1964 Land Act cancelled tenancy rights for those who were not registered as tenants with the Land Revenue Office. This instantly created 560,000 unregistered tenants without any rights, many of whom were poor and illiterate. These vulnerable people's livelihoods were placed in immediate danger.

In 1964, when the government formed the Land Act and made the first provision for tenancy rights, 1,818,975 tillers applied for those rights and 1,546,734 received the provisional certificate. However, only 318,596 were eventually registered as tenants, just 17% of those that applied. The 1964 Land Act permitted the landlord to evict his tenants as and when he wished. Even now, more than 40% of tillers plough a landlord's land without tenancy rights (Baseline report CSRC, 2006).

Table 7: Structure of Tenancy, 1991

Regions	Pure Tenants as % of total holdings	Mixed Tenants as % of total holdings	Area rented as % of total land
Nepal	1.9	14.9	9.3
Mountains	1.1	12.0	5.8
Hills	1.2	11.8	4.6
Terai	2.7	18.8	12.9

Source: National Sample Census of Agriculture, 1991.

Table 7 details the tenancy structure in 1991. Pure tenants are landless and only till the landlords land, mixed tenants own some land but need to till some of the landlords land in order to sustain a livelihood. The bulk of land holdings operate under this mixed tenure arrangement, with the highest incidence in the Terai.

The true incidence of tenancy is widely believed to be considerably higher including informal and unregistered tenants. The ineffectiveness of land laws and their slack implementation allows landowners to continue engaging tenants on an informal basis while maintaining full claim over their land. The situation is made more complex by the easy access for cultivators from across the country's southern border; landowners, particularly in the Terai Region, find it more convenient to use the readily available wage labourers from India.

There are over 1 million landless farmers living outside the protection of the law. The influence of powerful elites in land administration has left these people acutely exposed to exploitation. This desperate situation was starkly highlighted recently when an entire family from the Bara district saw suicide as their only escape route.

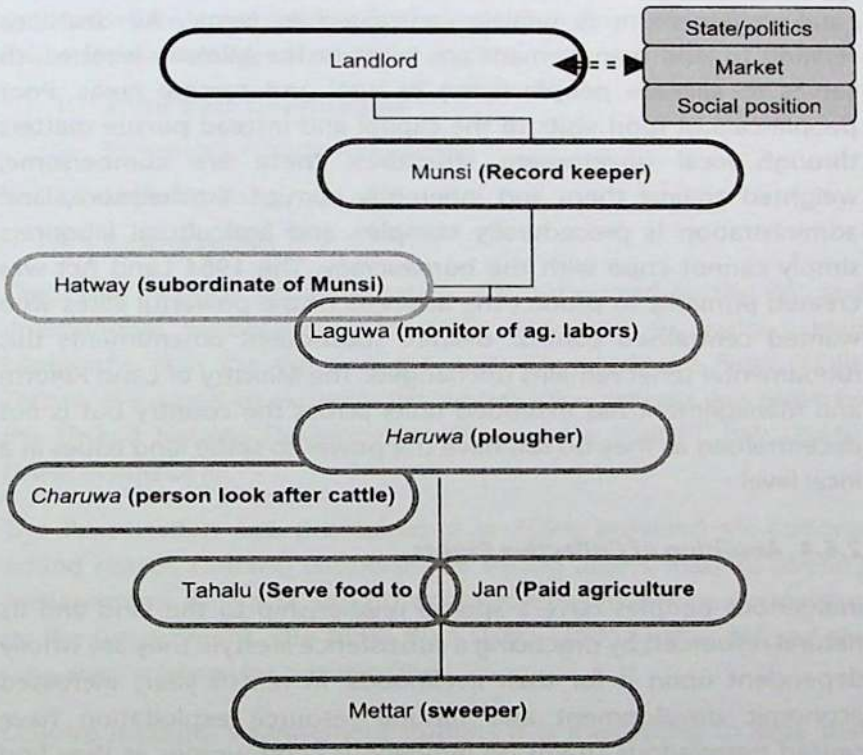
2.6.2 Feudal and Exploitative Practices: Haliya, Haruwa and the Kamaiya System

Literally, a *Haliya* or *Haruwa* is a male who ploughs his master's field. He is called a *Haliya* in the hills and a *Haruwa* in the plains. Typically it is a form of bonded labour, debt bondage in particular. The ploughman labours in the landowner's field as part of an annual contract to repay a loan. Since he cannot afford to pay the principal, he ploughs to pay off the interest on the loan. The initial loan amount is often very small but with exorbitant levels of compound interest the debt can increase exponentially leaving generation after generation as bonded labourers. It is to the landlord's advantage to maintain this bondage and they are well placed to deceive their illiterate, uneducated workers. A common ruse is to falsify the initial

capital borrowed; this is simple enough to do by adding a zero to turn, for example, 5000 into 50,000.

It is estimated that there are 60,000 *Haliya* families and considerably more *Haruwa*, for which there is no current baseline data. The *Haliya* are ruthlessly exploited through poor wages, excessive labour and physical and psychological abuse; they have no identity and little dignity. The *Haliya* and *Haruwa* people are mostly *Dalits*, Nepal's lowest caste.

Figure 3: Land-based Hierarchy of Terai in Nepal



The diagram above illustrates the land ownership induced social hierarchy in Nepal, especially for the Terai region. This hierarchy is indicative of the exploitative and feudal practices employed by some

landlords. The system has several categories of labourers including ploughmen, cattle herders, farm workers and sweepers.

In this system the landlord maintains close connections with the State and local or national political organisations. The landlord also has strong ties with the market which favours landlords because of their State connections. In addition many landlords carefully present a social conscience through involvement in the community, whether it be sitting on a school management committee or funding the construction of a temple.

2.6.3 Centralised Land Governance

Land management is heavily centralised in Nepal. All decisions relating to land management are taken at the Ministry level which serves to alienate people living in rural and remote areas. Poor people cannot fund visits to the capital and instead pursue matters through local government structures; these are cumbersome, weighted against them and inherently corrupt. Furthermore, land administration is procedurally complex and agricultural labourers simply cannot cope with the bureaucracy. The 1964 Land Act was created primarily to protect the interests of the powerful elites who wanted centralised control; despite subsequent amendments this fundamental tenet remains unchanged. The Ministry of Land Reform and Management has extended units across the country but is not decentralised as they do not have the power to settle land issues at a local level.

2.6.4 Abolition of Collective Rights

Indigenous peoples have a special relationship to the land and its natural resources; by practicing a subsistence lifestyle they are wholly dependent upon it for their livelihoods. In recent years increased economic development and natural resource exploitation have caused tremendous strains on indigenous communities as they find themselves gradually displaced from their native land. This is a problem facing indigenous communities throughout the world but is especially acute in Nepal. The current threats to the collective rights of indigenous people include: oil exploration, mining, dam building,

logging, cash cropping, cattle ranching, national parks, nature reservations and tourism.

2.6.5 Privatisation in Nepal

When the World Bank (WB) sponsored the Structural Adjustment Programme in the 1980s privatisation was placed on the agenda. The government of Nepal had no choice but to accept the WB's strategies as they were linked to the foreign aid assistance.

The government did little with respect to privatisation until after the restoration of democracy in 1990. The newly elected government began implementing its privatisation policy in 1992 with 51 public enterprises being identified for privatisation during the first phase. Privatisation strategy offered four options:

1. Immediate privatisation
2. Privatisation with preparation
3. Liquidation
4. Restructuring

The initial strategy for privatisation was supported by the WB and International Monetary Fund (IMF) and tied to various loan conditions with the WB and the Asian Development Bank (ADB). Technical support to expedite the privatisation process was given by the United Nations Development Programme (UNDP), WB, USAID, DANIDA and DFID.

The Privatization Act, promulgated in 1994, provided six options: selling shares, forming cooperatives, selling assets, leasing, offering management contracts and other approaches as deemed necessary by the Government. The Ninth Plan (1992-1997) further defined the long term strategy for privatisation.

Despite multiple arrangement options it is interesting to note that between 51% and 72% of the shares of newly privatised companies were controlled by an elite group of entrepreneurs. According to Manandhar and Bajracharya (2004) the government privatised the companies but not the land, which they kept under State control.

There has never been a consensus on privatisation in Nepal. The Nepali Congress (NC) considered privatisation as an internal necessity whereas the Communist Party of Nepal (CPN Maoist) and United Marxist Leninist (UML) saw it as an external compulsion. Critics were alarmed at growing foreign influence in the economy, the further consolidation of economic power in the hands of few rich businesses, the lack of transparency and the under-valuation of assets.

Nepal is in the process of integrating into regional and global trading platforms which require a series of commitments to privatisation and liberalisation. As a member of the WTO, Nepal has a legal obligation to align its economic policy with global requirements.

Nepal has recently entered into a WTO network that requires promoting an open market economy which has serious implications for landholdings; multinational companies and the private sector could acquire large tracts of land which would further alienate and marginalise poor farmers.

2.7 State Response for Land Reform

2.7.1 Government Initiatives

Perhaps the first State response in favour of the ordinary person was the abolition of slavery in 1934. Freed slaves were given land and settled in a region of the Terai named Amalekhgunj (or the settlement of the freed slaves). Nothing further happened until the advent of democracy in 1951 when a commission was formed, under the leadership of Naradmuni Thulung, to consider a land reform process. It recommended land ceilings and tenancy rights.

In 1959, the government passed an act to cease the *Birta* system, thus ending the age old feudal tradition of land distribution, at least in principle. It is said that one of the key reasons for the subsequent dismissal of the elected parliament was the scheduled Land Act.

The 1964 Land Act was promulgated under the autocratic regime of the late King Mahendra. The Act met with strong opposition from

land owners and was compromised by the tacit agreement that it would not be strictly implemented (Shrestha, 2002).

In 1987 the government distributed cleared forest in an attempt to assuage the building resentment directed towards the autocratic *Panchayat*i system led by the king.

Following the People's Movement in 1990 a number of commissions to study land reform were instigated by consecutive governments. In 1996 the fourth amendment of the 1964 Land Act gave registered tenant farmers the right to claim 50% of the land they cultivated. Any claims, however, had to be made within six months of the amendment; it formally terminated the right of tenancy for tilling thereafter. At this time, many tenant farmers had temporary proofs of cultivation obtained during the Cadastral Survey, a land survey carried out after the 1964 Land Act, but they had not been officially registered as tenants. Without this official registration, they were ineligible to claim ownership of the land and it formally terminated the tenancy rights of 500,000 families.

The Maoist insurgency and mounting pressure from land rights activists forced the government into tabling a fifth amendment to the 1964 Land Act in 2001; this created a provision to lower land ceilings but the law was immediately repealed by the Supreme Court who deemed it unconstitutional.

Major Milestones in Nepal's Land Reform Process

1792	Bahadur Shah took steps to stop the arbitrary eviction of tenants and landless farmers
1853	The Rana government abolished all *Jagir* system land in Terai
1854	Civil Code legally protected against the arbitrary eviction of peasants
1870	The sale and mortgage of Raikar land in the Terai is permitted
1888	Recognised the transfer of land holding rights but was subjected to the approval of Talukdar

1921	The transfer of land holding rights came into law
1951	Land Acquisition Act was formulated to gather feedback from the general people. This was the first initiative towards 'land reform' from the government.
1951	Land Assessment Commission formed. The commission made several pro-peasant recommendations, such as no eviction until after a full-fledged land survey, maintenance of tenancy records, landlords to provide rental receipts.
1952	Formed Land Commission under the Chairmanship of Naradmani Thulung who again recommended securing tenancy rights and establishing a land record system.
1955	A 13-point plan introduced with the aim of solving land issues
1959	Introduced Birta Abolition Act
1962	Introduced Land Survey Act
1964	Introduced Land Reform Act
1976	Introduced Trust Land Act
2001	Lowering of land ceiling (miscarried as the law was overturned by the Supreme Court)

3.0 POLICY FRAMEWORK

3.1 Legal Framework

The Government of Nepal has created legislation for land management and reform time and again but with little actual result. Since the introduction of the 1964 Land Act there have been a number of amendments and revisions but ultimately there was a lack of political will to enforce them.

There was growing demand from tenants and landless farmers to see the land reform agenda enshrined in the new constitution as a fundamental economic and social right. Following the people's movement in 2006 and pressure from tillers and landless farmers the democratic government began to take this matter seriously. Land reform, in principle only, is now included in the Interim Constitution and the 3 year national plan (2008-2010)

There is almost universal acknowledgement that the laws should address rights issues and these laws are beginning to take into account the concerns of marginalized groups such as farmers, forest dwellers, women and lower castes.

Prevailing land management policies are detailed in the following sections.

3.1.1 Interim Constitution of 2007

The Interim Constitution 2007 has made the following pledges:

> "Pursue the policy of adopting scientific land reform programs by gradually ending capitalistic land ownership practices". (Part 4, Article 33 (f))
>
> "The State shall pursue a policy of making a provision of providing adequate pieces of land and livelihoods to the

freed bonded labourers for their sustenance by determining their number". (Part 4, Article 35 (15))

CSRC and its allies have been demanding this level of commitment for a long time. It is now necessary to ensure the political will is present to see this through.

3.1.2 Land Reform Act of 1964

The 1964 Land Act stipulates the following regulations:

- Fixed ceiling on the total amount of land owned by any one individual.
- Protect the rights of tenants by registering their name on the land certificate (the inclusion of the names of wives on the certificates provides increased security).
- Fixed rent on agricultural land.
- Protect rural loans from high interest rates.

The 1964 Land Act has been amended six times. The most important are the fourth and fifth amendments.

The fourth amendment which came into force in January 1997 included the following provisions:

- Registered tenants are entitled to claim 50% of the land they cultivate.
- Credit facilities will be made available to the tenant should they wish to buy the owners' share also, subject to the owner's consent.

The Fifth Amendment came into force in 2001 stipulating the following:

- Further reduce the land ceilings on the maximum land holding for any one individual.

The table below provides details on the land ceiling amendment.

Table 8: Land Ceiling prior to and after the Fifth Amendment of Land Act, 1964

Region	Prior to Fifth Amendment (per household)			After Fifth Amendment (per household)		
	Agricult-ural Land	Homest ead	Total	Agricult-ural Land	Homest ead	Total
Terai and Inner Terai (Plain region)	16.4	2.0	18.4	6.77	0.68	7.45
Kathmandu Valley	2.7	0.4	3.1	1.27	0.25	1.52
Rest of Nepal (Hills and Mountain)	4.1	0.8	4.9	3.56	0.25	3.81

Source Ministry of Land Reform and Management (2006)

3.2 Programs and Policies

3.2.1 Three-year Interim Plan 2007-2010

Prepared by the National Planning Commission this plan has set a long term objective:

> "To make living standard of farmers prosperous and to contribute to the national economy based on fair land ownership and scientific land management system through the implementation of scientific land reform".

The plan set certain specific objectives, for example:

> "To ascertain the land rights to the landless slum dwellers, freed bonded labourers and tenants for ensuring food security, addressing poverty and making the land more productive".

The Interim Plan pledged to create a high level commission to resolve these issues.

3.2.2 Program and Policies for fiscal year 2007/8

The Minister of Finance presented this annual programme which included the following land related polices and plans:

- Government-owned, unused and barren land will be made available for commercial and cooperative farming under long-term leases giving priority to the landless.
- The foundation for implementing scientific land reform and ending the feudal system of land ownership will be prepared.
- To commence a system of issuing one certificate, recording all land owned by one person wherever the land may be situated in the country.
- Complete the process to end dual land ownership between the landlord and tenant.
- An amendment will be made to increase the participation of the landless in the land policy-making.
- Continue with the rehabilitation program for freed bonded labourers.

3.2.3 The Tenth Five Year Plan (2002-2007)

The long-term policy regarding land reform and management is stated as follows:

> "To bring about social justice and good governance and contribute in achieving the national goals of poverty alleviation through the development of an effective, trustworthy and qualitative land utilization and management system in the country".

The relevant objectives regarding land reform and management are:

- To strive for an efficient, service oriented and informative land administration system based on modern technology.
- To increase the access to land for actual farm workers (those whose skills and labour are directly linked with farming) and

thereby contribute towards poverty reduction by establishing and rehabilitating the target groups.

- To initiate steps to preserve, consolidate and manage historical and religious heritage and *Guthis* through local community participation.

To achieve these objectives, several strategies and policy actions have been proposed and quantitative targets have been set as follows:

- Preparing land use and national land policies through:
  - Formulation of national land policy to govern all the activities related to land.
  - Formulation of integrated act related to land and its implementation.
  - Implementation of land utilisation action plan to discourage non-agricultural use of fertile land.
- Strengthening the land information system which records land ownership, land utilisation and land resources. This aims at updating and securing land records, developing a geographical information system for the smooth flow of information and maintaining records of land entitlements.
- Updating topographical maps and developing the required manpower for land management.
- Discouraging land fragmentation by fixing a minimum size of land that is eligible for registration and further discouraging land fragmentation beyond a certain minimum size.
- Efficient management of the settlement of *Kamaiya* and improving their livelihoods. The proper management of the settlements of landless and freed *Kamaiya* and providing skill-oriented training to improve their capabilities for income generation. A redistribution of land, made available after the imposition of new land ceilings, to the landless and economically marginalised sections of society.

- Seek ways to implement and manage the new land ceiling and prepare grounds for the formulation of a progressive land taxation system to discourage unproductive land holding.
- Mobilising peoples' participation for managing *Guthi* and updating *Guthi* records.

Several programmes and their quantitative targets have also been set corresponding to the above objectives, strategies and policy action plans. The programmes as such seem to be highly progressive. But much of this remains yet to be seen though almost all of the plan period has already elapsed.

3.2.4 Agriculture Perspective Plan (APP 1996-2016)

The APP spans 20 years and is one of a series of long-term plans in the agricultural sector. This plan focuses on a small number of priorities to create economies of scale for commercialisation (APROSC/JMA, 1995 cited in Subedi et. al. 2002). The main aim of the plan is to enhance productivity and encourage commercialisation and diversification.

The plan identifies dual ownership of land and land fragmentation as major constraints for agricultural development and recommends terminating dual ownership and curbing fragmentation while initiating land consolidation based on the recommendations of HLCLR 1995. The plan notes that dual ownership discourages investment in land development but o date there are no signs that any practical initiatives have been taken to achieve land reform and land consolidation.

3.2.5 National Agriculture Policy of 2004)

The National Agriculture Policy of 2004 is guided by the APP (1996-2016) and further emphasises the need for increased access to land for the landless and marginalised farming groups; this is seen as a pre-requisite for increased productivity and the general development of the agricultural sector. The key policy statements are listed below:

- Opportunities for enhanced land access will be increased by effectively implementing present land ceilings; effective monitoring to identify landholding above the ceilings; imposition of progressive taxation policy and formulation of contract rules for hiring farm land.

- Credit facilities will be made available to purchase farm land for the purpose of agricultural production through the establishment of a Land Bank. Information on these services will be made available to the buyer and seller through the involvement of local authorities.

- The *Dalit* and marginalised and landless agricultural labourers who are contracting and operating farms and ponds (or other water bodies) for the purpose of producing agricultural commodities will be provided free technical assistance and grants (for seed purchase etc). These farmers should form organised groups to apply for these services.

- The marginal public lands, grazing lands, degraded forest area and unused public lands will be leased to targeted community members.

3.2.6 Customary Land Related Provisions

Unofficial land rights were exercised by some groups in the past; most notable was the *Kipat* system operated by the *Limbu* people in the eastern hills of Nepal which ended in 1968 following an amendment of the 1964 Land Act.

Chepangs lost their rights to land they had been shift-cultivating for generations. Many ethnic communities, such as *Hayu, Rai, Limbu, Majhi, Tamang, Sherpa, Tharu Chadhary* claim that their settlements have been appropriated by the elite ruling class. The district profile of Kanchanpur reveals that the *Tharu Chaudhary* occupied 82% of the land some 50 years ago; they now have only 16% (DDC profile). There are many other examples of state sanctioned programs that have curtailed the rights of indigenous people and jeopardised their security and livelihood.

The existing legal system does not support any unofficial ownership of cultivable land based on traditional customs. In some places, under special circumstances, land is allocated for religious purposes and cannot be cultivated.

3.3 International Laws and Instruments

The Universal Declaration of Human Rights (UDHR) 1948, Article 25 states that:

> "Everyone has the right to a standard of living adequate for the wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security".

Similarly, the International Covenant on Civil and Political Rights (ICCPR 1966), considered a major legally binding instrument, states that:

> ".... by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development...in no case may a people be deprived of their own means of subsistence for which poor people's possession of land becomes vital".

Likewise, the International Covenant on Economic, Social and Cultural Rights (IESCR) 1966 guarantees the rights of people over natural resources, including land, stating:

> "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence".

The ILO Convention (Article 1) sees land as a fundamental criterion for the self-determination of indigenous peoples in their respective country. The Convention safeguards the rights of indigenous and

tribal peoples (Article 2) to retain their social and cultural identity, customs, traditions and institutions. Articles 14 and 15 give special importance to the cultural and spiritual value attached to their lands or territories and to safeguard traditional rights of ownership and land use.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is also a relevant international instrument in relation to land rights. Article 14 of the Convention makes a landmark provision relating to Lands and Natural resources:

> "The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect."

The rights over lands and natural resources are enshrined by these international laws, each of which has been ratified by Nepal. The government is duty bound to incorporate these international laws in its national laws and implement them effectively. It is the obligation of signatory states to submit reports to the United Nations Human Rights Committee (UNHRC) regarding measures taken to ensure the enjoyment of these rights by their citizens.

With the advent of democracy in 1990 and the ratification of major international human rights treaties Nepal became exposed to the international arena of rights related issues. There is now a spotlight on Nepal's commitment to promote and fulfil these obligations.

Nepal has so far failed in its obligation and commitment to addressing these human rights issues. The decade-long armed conflict is often produced as an excuse for this failure but this should not be used as a shield to deflect honest criticism and rational enquiry into the systematic failure in addressing rights related issues.

3.4 Political Economy of Land Reform in Nepal

The general feeling amongst most activists, including CSRC, is that there are existing laws in place to achieve a more equitable distribution of land, protect tenants' and land workers' rights, secure livelihood security for marginalized people and develop a better organised, more profitable agricultural sector. It is the lack of political will which poses the main challenge to land reform progress in Nepal today.

The State has proved a little more active following the restoration of democracy in 1990 and has addressed the plight of one of Nepal's most exploited groups, the bonded labourers. The emancipation of bonded labourers was declared in July 2002. Parliament has further addressed specific cases of land displacement caused by development projects and floods.

A comprehensive assessment of the government's recent record on implementing its land reform policies suggests that there is little desire for change. There is a compulsion to maintain the *status quo* and serve the interests of the powerful elite.

The period covered by the Tenth Plan is close to conclusion and many of the provisions have yet to be instigated. New towns continue to emerge on fertile agricultural land and there is ever increasing land fragmentation. The Government of Nepal, the National Land Rights Forum (NLRF) and the National Land Rights Concern Group (NLRCG) jointly signed an agreement on 14th September 2006 to form a high level commission on land reform. The commission is to include various stakeholders including representatives of land-deprived people but has yet to be formed. This raises the burning question: Does the political will and sense of urgency really exist to implement these reforms and bring about the changes that the Nepali people deserve, urgently require and voted for?

2006 witnessed massive political upheaval in the country. Maoist rebels fighting for a People's Republic forged an alliance with the parliamentary parties under a constitutional monarchy. The

Comprehensive Peace Accord (CPA) signed between the Nepali government and the Nepal Communist Party (Maoist) on 21 November 2006 agreed:

1. To adopt the policy of implementing scientific land reform and ending feudal land ownership.

2. To adopt the policy of managing economic and social security including providing land for slum dwellers bonded labourers, *Haliya, Haruwa, Charuwa* and the economically impoverished.

Following the Peace Accord the monarchy was suspended and a roadmap was set forth for a Constitutional Assembly with an Interim Constitution and a rebel-included Interim Parliament. The Interim Constitution 2007 made a commitment in Article 11 under the directive of economic-social transformation which included the following two motions:

1. To end all facets of feudalism. Structuring and implementing the minimum common program by combined consensus for economic social transformation.

2. To establish the rights of each citizen on education, health, settlement, employment and food security.

No significant change can be expected until a more stable government is in place following the elections in 2008. However, there exists a cross-party consensus on tackling land reform.

4.0 KEY ACTORS

This section examines the key actors involved in deciding, promoting and protecting the land rights of tenants and landless farmers in Nepal, either directly or indirectly.

4.1 The State

There are two main government agencies that are instrumental in directing land access and tenure issues in Nepal. The National Planning Commission (NPC) has an overall responsibility for setting development policy and strategy; it operates as the central agency for evaluating, facilitating and monitoring development plans, policies and programmes, and provides a platform for discussion and consultation on economic development. The NPC operates under the directive of the National Development Council in exploring and allocating resources for economic development. The Ministry of Land Reform and Management is responsible for actually implementing policy and strategy.

4.2 Political Parties

There are eight major political parties and each has proposed multi-dimensional programs to develop the agriculture sector; all agree that it is the backbone of the economy and have prioritised it as such in their manifestos.

The major parties have included land reform as part of an overall agricultural programme rather than as a separate issue, while accepting land rights as a key factor in the development of the agricultural sector.

Since the reinstatement of democracy in 1990 parliamentary elections have been held on three occasions (1991, 1996 and 1999). The issue of land reform has been discussed on each occasion and with increasing levels of understanding of the matter. The following are consensus agreements between the major political parties:

1. Prioritise the land reform agenda and realise the need for land reform.
2. Land reform is a vital component of overall agricultural development.
3. End dual ownership over land.
4. Establish fertilizer factories.

Appendix 4 gives a detailed description of each political party's manifesto and position on land reform.

Most political parties present a sympathetic front to the concerns of squatters, landless peasants, freed bonded labourers, indigenous/disadvantaged people, tenants and other similar groups of landless people. They are also concerned about accelerated land fragmentation and the issues surrounding commercialisation and privatisation in agriculture. They vocally urge 'revolutionary' or 'scientific' land reforms as an urgent requirement.

The political parties all agree with land reform in principle; the challenge is to hold them accountable to their manifesto commitments.

4.3 Civil Society Organisations and Rights Holders

4.3.1 Civil Society Initiative

Civil society has matured under democracy and has established its importance in several specialised segments; human rights and development, democratic advocacy, community empowerment and poverty eradication.

Civil society has a vital role to play in building public opinion and facilitating debate on land related issues. It has an important task in

empowering and enabling landless tillers to exercise their rights and also in guiding and advising state policy makers towards a peaceful inclusive resolution as a means to ensuring social justice.

Although many of the recent land rights movements were supported by civil society organisations their involvement has been inadequate thus far, vis-à-vis their rhetoric.

4.3.1.1 National Land Rights Concern Group (NLRCG)

It was realised that a greater civil society alliance was required to tackle the complex political issue of land reform and to organise the disadvantaged community to influence political action. To this effect, NGOs and other civil society organisations formed the NLRCG, incorporating a diverse range of expertise, from media to human rights, ex-politicians and social activists. Together they assist both poor tillers and the State in resolving land issues.

The alliance adopted a capacity building strategy for deprived tillers and landless farmers, developing leadership skills to launch rights-claiming initiatives. So far the NLRCG has reached 1.6 million tenants and landless farmers, trained 996 local activists from the farming communities and supported and strengthened the tillers' own organisations.

4.3.1.2 National Land Rights Forum (NLRF)

With the assistance of the NLRCG the NLRF was established by the tillers and poor farmers themselves and now leads the land rights movement, representing over one million tenants and landless farmers.

The NLRF is a membership-based national level People's Organisation which began in 2004, consisting of land deprived people, including squatter settlers, slum dwellers, tenants, trust land tenants, landless farmers, former bonded labourers, *Dalits*, women, and other excluded and marginalised people. Covering 42 districts it has 28 district-level, and 1,211 village-level organisations, totalling 48,133 members (one person per family). Of these members, 19,098

are women and 23,531 are *Dalits*. The NLRF is led by 4,718 community leaders, of whom 48% are women and 56% are *Dalits*.

The NLRF has conducted conventions and mass awareness campaigns often mobilising hundreds of thousands of people. The NLRF has taken shape as a peaceful social movement with democratic leadership and consensus decision making aiming to catalyse 'pro-people' land reform.

4.3.1.3 Community Self Reliance Centre (CSRC)

CSRC is the leading NGO supporting the land rights movement in Nepal. CSRC began its involvement in land rights in 1995, beginning in two VDCs in Sindhupalchowk district, before expanding rapidly to cover 42 of Nepal's 75 districts. CSRC pursues the twin objectives of empowering poor farmers to claim their rights while ensuring that land reform is high on the political agenda. It was necessary for CSRC to overcome contemporary development ideology to establish land rights as a pre-requisite for fighting poverty and discrimination; gradually development organisations have began to recognise the importance of land in protecting human rights, building peace and addressing poverty and discrimination.

CSRC other civil society organisations conduct valuable research to determine the extent and degree of rights violations which is used in mediation and advocacy to help redress the incumbent injustice.

4.3.1.4 The Media

The media play a key part in building public opinion and influencing both ordinary people and policy makers. The media are generally in solidarity with disadvantaged communities in their struggle for land rights.

4.3.2 People's Claims for Land Rights

Tenant farmers first began the land rights movement well before the restoration of democracy in 1950. They fought for justice and many sacrificed their lives but successive governments did not respond to their calls.

In 1951 a group of farmers from the Bardia district protested against a new share-cropping initiative introduced by the government. The protest was subdued by force, resulting in the death of six farmers and further intensified the conflict between tenants, landlords and the government.

The following sections describe the main people-led events in the struggle for land rights.

4.3.2.1 Farmers' Movement (1950-1960)

Although the Farmers' Movement started in 1800 it was not properly organised until 1950. The Movement officially began in Bhaktpur district when farmers refused to pay their 'grain payments' (the form of rental payment) to the landlord. In the same year a tenants' rights movement started in Bhaktpur and Kathmandu districts followed by similar protests against share-cropping in many other districts across Nepal. In 1951, the agricultural union Akhil Nepal Kishan Sangh (All Nepal Farmer Association) was formed.

The Farmers' Movement believed firmly that: "If the majority of people remain poor and without food, it will be dangerous not only to law and order and freedom but also to the landowners themselves". An echo of Adam Smith's famous declaration: "No society can claim to be successful if the greater number of its members are unhappy". During the totalitarian *Panchayat* regime (1960-1990) farmers' organisations worked tirelessly in pursuit of land rights but with little success.

4.3.2.1.1 Land Struggle in Western Nepal

Mr. Bhim Dutta Panta led the struggle for farmers' rights in the 1950s from the Far Western Development Region and visited many districts in his bid to catalyse the Farmers' Movement. He fought in particular to eradicate the *Haliya* and *Kamiya* systems and rebuked landlords with the slogan " Either you till or you leave the place, if it is not now, no benefit". He succeeded in spreading his revolutionary message,

particularly in Kailali and Kanchanpur districts before he was murdered by the Rana regime.

4.3.2.1.2 Land Struggle in Kathmandu and Baktapur

The Land Reform Commission discussed the farmers' demands on 25 September 1954. In October of the same year farmers in Kathmandu organised a sitting protest to pressure the government into addressing a six point proposal, including the ability to pay rent with money rather than solely in kind. When it became apparent that the government was indifferent to their demands they organised demonstrations which led to 19 arrests and imprisonment without food for 3 months. Demonstrations began again in March 1957 resulting in the arrest of 55 farmers who were detained for 10 months. The Movement continued to fight for land rights until 1980 with the help of the Nepal Majdur Kisan Party (Nepal Workers and Peasants' Party).

4.3.2.1.3 'Ji Kaho' Struggle, Central Terai district

The *'ji kaho, no re kaho'* (address us respectfully not thou) revolution in Rautahat and Bara struggled against feudal land ownership and played an important role in the history of the Farmers' Movement. The revolution fought for the right to dignity and respect from landlords. Under the slogan *maddat bhakari khada karo* (set up a grain bank), they endeavoured to help poor farmers by asking people to give as much as they could afford, even landlords were compelled to submit to these demands. The regime tried to suppress this revolution and the police were sent to arrest the leaders. They met with strong resistance from the farmers who succeeded in repelling them.

4.3.2.1.4 Expansion of Land Struggle in Terai

From 1953 to 1955 *Khamar rok,* a farmer-led resistance, took place in almost all districts of the Terai. Youths who had taken up arms were declared as bandits by the State and one of the leaders, Narayan Oli, was imprisoned for 16 years. The Socialist Farmers Party which led the agitation was disbanded, the Farmers' Union was also banned,

later reorganising as the Farmers' Organisation under the Panchayat regime.

4.3.2.2 Farmers' Agitations and Democratic Movement (1960 to 1990)

4.3.2.2.1 Jhapa Land Rights Struggle

From 1970 to 1974 there was an influential insurgency among the farmers at Jhapa. The insurgency gained momentum and lead to violent struggles and a number of arrests and deaths. The government suppressed the insurgency with brutal methods; these included the murder of five youths in a forest at Sukhani. The Jhapa struggle created a new method of revolution by mobilising large groups of farmers who were willing to employ strong-arm tactics against the landlords.

4.3.2.2.2 Chhintang Movement, Dhankuta 1979

The Chhintang insurgency began when farmers broke into a landlord's grain store during a period of famine and distributed the grain amongst the starving community. Beginning in 1978 it gained momentum throughout 1979 with women playing an important role. The landlords, acting as feudal overlords, controlled all the fertile lands. The unfertile lands were cultivated by the farmers and produced only enough food for four months of the year. Government security forces crushed the movement and it ended in despair.

4.3.2.2.3 Piskar Movement, Sindhupalchok 1983

This movement grew from the frustration and exploitation of farmers of Piskar village in Sindhupalchwok district. The movement was sparked in 1978 when landlords looted rice from poor farmers' paddy fields. The farmers retaliated but within two days the landlords had summoned 200 policemen who set about arresting the insurgents.

4.3.2.3 Land Rights Movement after 1990

Following the People's Movement for the restoration of democracy in 1990 people expected that their demands for land rights would be granted. Mr. Jagananath Acharya, the Nepali Congress Minister for

Land Reform and Management was in favour of progressive land reform and was promptly sacked from his post, echoing the sacking of pro-reformist Nepali Congress leader, BP Koirala, in 1950. With pro-landlord politicians governing the land reform process little has been achieved.

The major land rights movements since 1990 are as follows:

1993 Kanara Movement in Bardiya district demanded land rights for the *Tharu* Community. The movement was suppressed by the Government.

1995 Tenants and landless farmers launched the "No grain payment to landlords" movement in Rasuwa district.

1996 The Fourth amendment to the 1964 Land Act guaranteed tenancy rights on 50% of the landlord's land tilled by the tenant. Initially 42 tenants and landless farmer families filed cases at the District Land Reform office, Sindhupalchok district, demanding their tenancy rights. This was followed later in the year by 72 and then 252 tenants.

1997 Land rights deprived people of Banke and Bardia districts launched the Bagdari Movement in Bardiya district and the Pitmari Movement in Banke district. The government attempted to suppress them.

1997 The *Kamaiya* Concern Group (KCG) was formed and began to educate the *Kamaiya* to form a movement.

1998 Landless people captured land belonging to a private company in Banke district.

2000 *Kamaiya* Movement expanded in five districts of the mid-West and far-Western regions. The government declared *Kamaiyas* liberated.

2001 The Fifth Amendment to the 1964 Land Act reduced the land ceiling limit. Landlords successfully challenged this through the Supreme Court.

2004 Over 73,000 tenants and landless farmers' families filed land rights cases at the Land Registration Committee's offices as

per government policy. Land deprived people encircled the CDO, DLRO offices to pressure the matter.

2004 Tenants and landless farmers organised a 48 hour hunger strike at Rajbiraj, Saptari district, demanding their land rights and citizenship.

2004 Tenants filed over 21,000 tenancy rights cases, for 50% of the land they till, at District Land Reform Offices.

2006 Hunger strikes were organised in front of the Land Reform Offices at Sunsari district demanding land rights. Prominent Indian Land Rights leader PV Rajagopal extended his solidarity.

2006 Tenants and landless farmers padlocked the District Land Reform Offices in Dang, Banke, Bardiya, Sunsari, Sindhupalchok, Sapatri, Siraha and Mahottari, among others places, to seek prompt action on the cases filed earlier.

2007 Land rights deprived people organised sit-ins at the key political party offices, at both district and national level, demanding land rights. A recent sit-in was organised in front of the Prime Minister's residence.

2007 Badi women demonstrated for land rights and livelihood security at Singh Durbar in Kathmandu where parliament and the cabinet offices are located. Following a two month demonstration the government entered into an agreement with the Badi community to provide them with land through constituting a high-level Land Commission.

Following the restoration of democracy in 1990 political parties carried the banner of land reform but could not provide concrete plans. In 1995, as a gesture, the government formed a high level commission to deal with land reform. The immature democratic process and fragile coalition could not implement the recommendations prescribed by the commission. People had great hope in 1990 which gradually turned into frustration and this same frustration helped fuel the decade long armed conflict that began in 1996.

4.3.2.4 Civil Society Movements

The following case studies identify the most important land rights movements within civil society.

4.3.2.4.1 CASE STUDY 1: Tenancy Rights supported by CSRC

This was a small but transformative land reform process initiated by the tenants themselves. CSRC carried out a study of tenants' livelihoods in 1994 in collaboration with ActionAid Nepal and found that 312 households out of 628 within the Kiul VDC, and 342 households out of 769 households within the Helambu VDC, were landless. In 1995, a three day camp was organised to provide legal training in Kuil VDC, where 100 farmers participated. A total of 65 tenants were trained and a 21 member Tenancy Rights Committee was formed. Since then, more than 1,600 tenants have been regularly receiving rent payment receipts and have filed their tenancy cases at the DLRO. These legal camps have since expanded to 14 VDCs within the district.

By 2001, more than 1,700 tenants had filed cases to claim their tenancy rights and 1,036 have received those rights.

In 2004, encouraged by this success, CSRC extended their land rights work to ten other districts. The NLRF was established in 2004 and began to pressure the government.

By 2007 1,211 People's Organisations had been established in 28 districts with the participation of 48,133 community leaders under the NLRF umbrella. A total of 25,492 tenant families have filed cases at the DLRO demanding their tenancy rights and security of tenure. A total of 13,484 cases were settled and 3,034 hectares of land received (worth NPR 893 million). Most of the tenant farmers of Sindhupalchok have received their land rights.

A total of 22,750 poor tenants and landless farmers especially *Dalits* have also received their citizenship certificates.

CSRC has since expanded these land rights initiatives to 42 districts.

4.3.2.4.2 CASE STUDY 2: Kamaiya

Following the liberation of the *Kamaiya* in 2000, the government has so far provided land to 15,000 of the 30,000 freed *Kamaiya* families. In

a progressive move the land is issued in the joint ownership of husband and wife.

4.3.2.4.3 CASE STUDY 3: Land Registration Committee, Sindhupalchok

In late 2007 the Sindhupalchok branch of the NLRF organised two meetings with the District Land Reform Officer, Chief District Officer and other government officials and politicians to discuss the implementation of an agreed commitment to solve a 'trust' land problem. In both meetings the District Land Reform Officer reneged on the commitment. The NLRF responded by padlocking the District Land Reform Office for three days. This prompted the Ministry of Land Reform and Management to form a committee to solve the problem.

The committee, with the help of the NLRF, received 1,960 applications from which 740 tenants received their tenancy rights within three months (with a land value of NPR 340 million). The committee has since recommended to the Ministry of Land Reform and Management that it expands its work to other VDCs.

4.3.2.4.4 CASE STUDY 4: Negotiation with Landlords

In early 2004 a land rights campaign began in Saptari. The campaign was sparked by the exploitation of 11 *Dalit* families by their landlord to deprive them of their land rights.

CSRC helped Janachetan Dalit Sanggam organise legal awareness sessions in the community and the legally aware *Dalit* community successfully gained the land that was rightfully theirs. They now own the piece of land occupied by their shelter, finally secure after 33 years.

4.3.2.4.5 CASE STUDY 5: Regaining of Public Land

Local activists and members of the Banke District Land Rights Forum identified a 200 hectare piece of public land that had been occupied illegally by sixteen landlords. The land had been cleared and made cultivable by landless farmers but under various pretexts the landlords had encroached and were cultivating it on a share-cropping basis with the landless farmers. The campaign centred on social justice as there were more than 150 landless families living in

the area depending on landlords for their daily survival. The tillers held meetings with the landlords and refused to cultivate their private land, agreeing only to cultivate the public land; the landlords realised their unlawful predicament and in May 2006 the public land was given over to the 150 landless families to cultivate collectively.

The community planted crops and celebrated their victory, transmitted live on Bheri FM Radio; the following day, landlords reclaimed the land, destroyed all the planted seeds and stores of the landless farmers and administered beatings. Local activists have held meetings with politicians, including the Maoists, who have promised to return the land to the landless families.

4.4 International Institutions/Agencies

Nepal is largely dependent upon international donors and the international community, institutions and agencies are key actors in establishing and influencing national development policy.

Nepal is undergoing a period of significant political transition towards a peaceful democracy and the assistance and cooperation of international parties will be vitally important.

There are only a few international agencies currently supporting the land rights movement; ActionAid International, DanidaHUGOU, Canadian Cooperation Office, MS Nepal and Care Nepal are among those that have prioritised land reform as fundamental to obtaining social justice and basic human rights.

The great many other donors whose objectives are to eradicate poverty and alleviate social injustice completely overlook landlessness and land rights. Distributing seeds and livestock does not address the core issues influencing the cycle of poverty and it is necessary to draw their attention to the fact that land rights are intrinsically linked with human rights, agricultural productivity and economic prosperity.

5.0 STRATEGIES TO ADVANCE ACCESS TO LAND

A two-fold strategy is required to advance access to land and bring about substantial land reform.

1. Ensure policy influencers and implementers are informed and advised on land issues and their wider implications.
2. Educate, organise and mobilise tenants and landless farmers to lawfully pursue their rights through grassroots pressure campaigns.

This approach builds a strong civil society alliance to maintain a groundswell of momentum in support of the channels of multi-level lobbying and policy advocacy.

5.1 Conditions for Success

Land reform is a complex political matter with entrenched power relations and pervasive socio-cultural influences. To achieve successful land reform there is a need for certain prevailing conditions:

- A democratic environment where people are free to claim their rights.
- Political will on the part of government to initiate the process of real land reform and to carry this process through to completion.
- An organised and informed civil society to challenge and assist the political process.

- The financial and technical assistance of international donor agencies.

The key areas for intervention to assist the land reform process include:

- Decentralisation of land management to local level, with real dissemination of power.
- Enhance farmers' capacity to improve productivity.
- A simplification of the legal and institutional methods of land governance.

The process of land reform and ensuring social justice needs to be a collective effort from all stakeholders: the State, private sector, civil society, landlords and the landless and tenant farmers. There is a common consensus between political parties and civil society regarding land reform, manifested in the provisions of the National Three Year Interim Plan and the Interim Constitution towards 'scientific land reform'. The development sector is increasingly treating land reform as an intrinsic human right and with the powerful emergence of the NLRF and NLRCG the issue is gathering significant momentum. During this period of transition and popular movement there is a real opportunity to make great strides.

5.2 Risks and Challenges

The entrenched power imbalance has so far proved to be a serious obstacle; powerful landowners who dominate society have succeeded so far in either obstructing or controlling land reform. It will take strong political will to confront society's power-brokers and champion the cause of the weakest, poorest and most exploited members of society. There are well-founded doubts that politicians will be reluctant to initiate the scientific land reform as directed by the Interim Constitution 2007. In short, the easy option is to maintain the *status quo* while paying lip-service to land reform as has proved the case so far.

It is important to ensure that the new constitution does not become a hindrance to land reform as the 1990 constitution proved to be; the fifth amendment of the Land Act 1964 imposed new land ceilings but was promptly nullified by the Supreme Court as unconstitutional.

We are now irrevocably in an era of globalization, for better or worse; Nepal must seek the best approach to maximise the benefits that globalisation can bring whilst minimising its adverse effects. Globalization advocates a market-based economy which regards land as a commodity with commercial value. An approach fervently mirrored by hugely influential donors such as the WB and the ADB. It would appear *prima facie* that poor tillers and landless farmers would be the losers while rich landowners would be the winners, further widening the gap between rich and poor and exacerbating Nepal's problems. However, with careful analysis and a scrupulous national policy it may be possible to achieve a more equitable system where all members of society can share in the long-term benefits that globalisation is touted to bring.

5.3 Strategies

The following recommendations should be considered as urgent strategic priorities.

5.3.1 Inclusive Policy Making and Implementation

When the Panchayat regime formed the first Land Act in 1964 it did not take into consideration the exploited farmers and primarily sought to protect the interests of the powerful landowners and tighten state control over land resources. Despite six amendments, the fundamentals remain unchanged.

Against this background of inequity it is essential that existing land acts are superseded by new inclusive policies which genuinely represent the vast majority of people involved in agriculture.

Most importantly, there should be a constitutional guarantee of land reform as this has proved to provide the bedrock for success; in West

Bengal progressive land policies have succeeded when backed by constitutional provision for land reform.

5.3.2 Restructuring of Land Administration

Land administration in Nepal is excessively centralised. The Ministry of Land Reform and Management have subsidiary units throughout the country but they do not have the power to settle land issues at the local level; all decisions relating to land management are taken at Ministry level.

Simple logistics and financial constraints preclude poor farmers from attending the Ministry. Even if they could, they would become entangled in a complex web of bureaucracy, procedure and bribery.

The lengthy legal process begins at the district courts where rulings can be challenged all the way to the Supreme Court. A staggering 72% of all court cases are over land disputes.

The authority of land reform and administration needs to be decentralised and delegated to DDCs and VDCs with District Land Reform Offices acting as secretariats. Separate land courts at the VDC and DDC levels should be established and charged with the authority to issue final settlement on local land issues and disputes. Legal bureaucrats must be educated on land issues to ensure that the legal process is simplified for ordinary people and does not unnecessarily hinder land reform.

The success of land reform in Japan, Taiwan and South Korea depended on the power and authority of local level committees.

5.3.3 Establish High Level Land Authority

Various land related commissions have been created by authorities since 1950 in response to growing unrest from the land deprived. These commissions were so heavily compromised by pressure from the land owning class that they were largely specious and ineffectual. The very word 'commission' has become synonymous with broken promises.

There is an urgent need to constitute a high level independent authority tasked with assessing land issues and issuing recommendations for concrete action. Such an authority should be an inclusive body comprising experts (legal, agricultural, technical) and representatives of the poor and marginalised, including women, *Dalits*, *Madeshis*, *Haliyas* and *Haruwas*. Any authority will need to establish an efficient communication network with DDCs and VDCs.

5.3.4 Educate and Organise Landless and Poor

Change will only come about through consistent pressure from the people, without constant pressure nothing will change and the ruling class will continue to control the poor through exploitative systems.

Unlike many other sectors, such as health and education, people do not receive land-related advice and information from the government despite its importance to their lives. How would a tenant farmer know to keep (and ask for) grain payment receipts or that he or she should get their tenancy registered at the District Land Revenue Office? Many tenants do not even consider the idea of tenancy rights.

It is essential to invest in the organisation and education of the landless and poor farmers, informing them of their rights and mobilising them against ongoing deprivation and oppression. Tenants' and landless farmers' organisations should be facilitated to realise a solid institutional base with strong, dynamic leadership to independently lead the land rights campaign. The land rights movement must remain firmly in the hands of the tenants and landless farmers where it is most effective. A sustainable and successful land rights movement needs to be led by those whose future security depends on its success.

Through peaceful democratic means the marginalised and deprived can reclaim their land rights and thereby their right to full participation in society.

5.3.5 Budget Allocation for the Agricultural Sector and Comprehensive Land Reform

The government receives billions of rupees through land taxes and transactions each year but reinvests less than 10% of this revenue in land management issues. Little is done to improve agricultural productivity and ensure food sufficiency, consequently productivity is in decline, food imports are increasing and the contribution of the agricultural sector to GDP is decreasing. Progressive land reform needs to be addressed alongside productivity and their inter-dependence recognised and prioritised. A budget overhaul with increased investment for the agricultural sector can then take place.

5.3.6 Making Land Reform a Common Concern

When land reform or land re-distribution is mentioned some people become alarmed, think of revolution or cry foul on behalf of the landlords, seen as victims of their own success. Land reform must be viewed as paramount if there is to be any hope of transforming the feudal economy which hangs like an albatross around the neck of Nepal. It is not leftist activism but firmly in the progressive interest of the national economy. Without land reform there will be no investment in farming technology, no improvement in agricultural productivity and no evolution from subsistence farming to surplus farming.

Land reform leading to improved agricultural productivity will stimulate the economy as a whole by creating employment, producing raw materials for other industries and reducing social unrest.

Advocacy agendas must associate the issues of land access with issues of poverty, peace, development, gender equality, social inclusion, minority discrimination, conflict transformation, environmental protection, agricultural productivity and economic prosperity to build a national consensus towards pro-tenant and pro-landless land reform by constant engagement with a wide range of national actors.

Land reformists are not asking for a piece of land for everybody but wish to ensure people's rights to live humane lives outside the confines of feudalism. The private sector and civil society must find an agreeable solution to this issue.

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7.0 GLOSSARY AND ACRONYMS

7.1 Glossary of Terms

Aputali	A property with no heirs
Bhumi	Land
Bigha	A unit of land measurement used in Terai, comprising 1.6 acres or 0.67 hectare. A Bigha is divided into 20 Katthas.
Bijan	A system under which land taxes on un-irrigated lands in the hills are assessed on the basis of the estimated quantity of seed maize needed for sowing
Birta	Land grants made by the state to individuals in the form of reward or gift usually on an inheritable and tax-exempt basis, which was abolished in 1969
Birtawal	Person owning Birta land
Brahmin	So called highest caste in Nepali caste hierarchy
Charuwa	Cattle herder
Chepang	An indigenous community of Nepal (still this is highly marginalized)
Chhetri	Second highest caste of the so-called caste system
Chut Guthi	Endowment land administrated by temple or monastery that was not surveyed
Dalit	A group of caste that are discriminated as so called 'untouchables' or 'impure', which is widely practiced by Hindu religious people in Nepal.
Deuki	A traditional system practiced in some society where a girl child is offered to the god and kept in

	the temple. The child is not allowed to enjoy human freedoms until the age of 14.
Gothala	A permanent labour system where these people are kept in the landlord's house for the purpose of cattle grazing and other manual labour
Guthi	An endowment of land made for any religious or philanthropic purposes
Guthi Tainathi	Category of Guthi lands where the Guthi Corporation has been cultivating itself, or else may appoint tenants on a permanent basis to do so
Haruwa	Plough man (a kind of bonded system mostly practiced in Terai)
Jagir	Arable lands assigned to government employees and functionaries in lieu of their emoluments, which was abolished in 1952
Jagirdar	The government employees who were paid their emolument with allotment of land for their service
Janajati	Ethnic and indigenous nationalities in Nepal
Jhangahd	An indigenous community of Nepal
Jhoda	Name of a place where the land rights movement was started in the name of Jhoda farmers' struggle
Jimidar	An individual responsible for land tax collection at the village level in Terai region who was responsible for autocratic regime before 1951
Jimidari	A Jimidar's administration or exercising his powers (all Jimidars were men)
Jimuwal	An individual responsible for land tax collection at the village level in hill region who was responsible for autocratic regime before 1951
Jirayat	A plot of taxable land attached to the Jimidar's emoluments
Kamaiya	A bonded labor system widely prevalent in the five district in the Mid and Far Western development region of Nepal

Kattha	A unit of land measurement used in Terai comprising slightly over 300 square meters in surface
Kipat	A system of communal land ownership prevalent among the Limbus and other Mongoloid communities in the hill regions
Kut	A system of sharecropping under which the landowner appropriated a specific quantity of the produce or a stated sum in cash as rent
Land Holding	An agricultural land holding, economic unit of agricultural production. The holding includes all land operated by a holder whether rented or owned. A holder is the person who exercises management control over the operations of the land and may or may not be the same person as the household head (CBS).
Limbu	Ethnic and indigenous nationalities in Nepal
Majhiyas	A feudal leader or landlord of community
Mukhiya	A village head appointed by the government to settle the dispute in the hill regions
Munda	A type of indigenous community of Nepal
Muri	Unit of quantity of grain used by local communities
Mushahar	A caste of Terai falls under Dalit group who are discriminated and humiliated
Panchayat	The autocratic regime where the King exercised absolute state powers for the period 1960 to 1990
Raikar	Lands on which taxes are collected from individual landowners; traditionally regarded as state-owned
Raj Guthi	Endowments of the lands under the control or management of the Trust Corporation
Rakam	Unpaid and compulsory labor services due to the government from peasants cultivating Raikar, Kipat, and Raj Guthi lands; abolished in 1963
Rana	Surname of group of elite people who ruled Nepal from 1846 to 1950

Ropani	A unit of land measurement used in hill districts, comprising an area of 5,476 square feet
Talukdar	A village-level revenue-collection functionary in the hill region
Tenant	Tillers of landlord's land
Terai	The plain land of the Southern part of the country

7.2 List of Acronyms

ADB	Asian Development Bank
APP	Agriculture Perspective Plan
APPROSC	Agriculture Project Support Centre
BA	*Bikram Sambat* (Nepali calendar year)
CAS	Country Strategy Paper
CBO	Community Based Organisation
CBS	Census of Bureau of Static
CPA	Comprehensive Peace Accord
CPN	Communist party of Nepal
CSRC	Community Self-Reliance Centre
Danida	Danish International Development Assistance
DDC	District Development Committee
DFID	Department for International Development
DLRO	District Land Reform Office
FAO	Food and Agriculture Organisation
FDI	Foreign Direct Investment
FECOFUN	Federation of Community Forest Users Nepal
HDI	Human Development Index
HLCLR	High Level Commission on Land Reform
HRC	Human Rights Committee
HUGOU	Human Rights and Good Governance Advisory Unit
ICCPR	International Covenant on Civil and Political Rights
ICEARD	International Convention on Elimination of All forms of Racial Discrimination

ICESCR	International Covenant on Economic, Social and Cultural Rights
IIDS	International Institute for Development Studies
ILO	International Labour Organisation
IMF	International Monetary Fund
LDC	Least Developed Countries
LWA	Land Watch Asia
MNC	Multinational Company
NC	Nepali Congress - A political party
NLRCG	National Land Rights Concern Group
NLRF	National Land Rights Forum
NMKP	Nepal Majdur Kinsan Party – A political party
NPC	National Planning Commission
NPR	Nepali Rupees
NSCA	National Sample Census of Agriculture
NSP	Nepal Sadbhawana Party – A political party
PRSP	Poverty Reduction Strategy Paper
RPP	Rastriya Prajantra Party – A political party
SAP	South Asia Partnership
SDC	Swiss Development Cooperation
SJN	Samyukta Janamorcha Nepal - A political party
UDHR	Universal Declaration of Human Rights
UML	United Marxist and Leninist
UNDP	United Nations Development Programme
USAID	United States Assistance for International Development
VDC	Village Development Committee
WB	World Bank
WTO	World Trade Organisation

8.0 APPENDICES

8.1 Appendix 1: Legislation Concerning Land

8.1.1 The Old Legal Provisions of the Land Tenure System

1. Civil Code 1910 BS (Bikram Sambat)
2. Nepal Tenancy Rights and Security Act of 1951
3. Madesh Mal-Sawal
4. Pahad Mal-Sawal
5. Land and Preparation of Records of Cultivators, Land Act 2013 BS
6. Land Related Act 2014 BS
7. Land Related Rules 2017 BS
8. Land Revenue Special Provision Act 2018 BS
9. Agriculture Related (new provision) Act 2019 BS
10. Agricultural Re-organization Act 1963

8.1.2 The Old Legal Provisions of the Land Tenure System

1. Immovable Property Acquisition Act 2013 BS
2. Civil Code 2020 BS
3. Contract Act 2026 BS and Contract Service Rules 2026 BS
4. Trust Corporation Act 2033BS
5. Land and Building Tax Act 2019 BS and land and Building Rules 2020 BS
6. Land Measurement Act 2019 BS and Land Measurement Rules 2058 BS
7. Land Acquisition Act 2034 BS

8. Jhora Area Land Related Act 2028 BS and Rules 2028 BS
9. Forest Act 2049 BS and Forest Rules 2051 BS
10. *Birta* Abolition Act 2016 BS and *Birta* Abolition Rules 2017 BS
11. Land Related Act 2021 BS and Rules 2021 BS
12. Ukhada Land related Act 2021 BS and rules 2021 Bs
13. Kharka (grazing land) Land Nationalize Act 2031 BS and Rules 2033 BS
14. Land and Building Tax Act 2019 BS
15. Land and Building Rent Tax Act 2023 BS
16. Soil Conservation and Protection Act 2039 BS
17. Ownership Related United Housing Company Act 2054 BS and Rules 2060 BS
18. Local Governance Act 2055 BS and Rules 2056 BS

Note: The Nepali Calendar year, Bikram Sambat, is 56 years in advance of the Gregorian calendar from January to the second week of April and 57 years thereafter.

8.2 Appendix 2: Land and Society Terms

8.2.1 Religion

The Hindu religion has an overwhelming cultural and ideological influence on Nepal. Hinduism has always been the State religion* and has had a considerable influence on state policy. Approximately 81% of the population are Hindus, 11% Buddhist, 4% Muslim and 4% Kirat. Other religious groups include Christians, Sikhs, Jain, Garautes, Tapjuras and Bahais, together they constitute less than 1% of the population (CBS 2002).

* On 28th May 2008 Nepal was declared a secular republic

8.2.2 Caste and Ethnicity

Nepal is socially segmented along lines of caste and ethnicity. The caste system, a Hindu ideology, compartmentalises and binds people to a rigid vertical hierarchy. A person's caste is determined through birth and is unalterable throughout the course of their life irrespective of any economic or social achievements. A person's caste position has a strong bearing on their career development and either opens or closes the doors of opportunity provided by the State. Those in the upper castes often maintain a close interaction with the state apparatus, whereas those lower down often find themselves discriminated against in all areas of life.

Table 9: People of Nepal (Caste & Ethnicity)

Groups	No. of people	% of population
Bramhin	2,896,477	13
Chhetri	3,593,496	16
Other caste groups	3,850,999	17
Newar	1,245,232	5
Ethnic Communities	7,027,319	31
Dalits	2,902,907	13
Religious-linguistic groups	988,863	4
Unidentified groups	231,641	1

Source: CBS 2001

8.2.3 Gender

Discrimination on the basis of gender is deep-rooted and widespread in Nepal irrespective of caste and age. In rural areas, where patriarchal traditions remain strong, violence and discrimination against women is widespread. Women run the household and do much of the fieldwork, but have a low status in society and no right to property.

Discrimination against women begins at birth; parents are reluctant to invest in a girl's education when her main role in life is raising children and domestic work.

Although Nepal's literacy rate has increased in recent years, literacy rates for women trail far behind those for men. The overall literacy rate in Nepal is 53.74% whereas the female literacy rate is 42.49% (CBS, 2001). In 1996, primary school enrolment for girls was between a half and a third of that for boys. Only 1% of working women held the status of 'employer' and less than 1% of candidates in local elections were women (HMG, 1996). There has been a remarkable turnaround in the representation of women in politics; the new Constituent Assembly formed in 2008 has 575 members, of which 191 are women. This provides a realistic basis for future improvement.

The maternal mortality rate is one of the highest in the World with 540 deaths per 100,000 live births (UNDP, 2003). It is closely linked with poor access to antenatal, delivery and postnatal care. Over 90 percent of births in the country take place at home and without professional assistance (NESAC, 1998).

Women are often denied the right to parental property and are commonly seen as second-class citizens, discriminated against in social, cultural, economic, religious and political arenas where they are oppressed, exploited and dominated..." (FWLD, 2000).

8.2.4 Polity

The coalition Government of the seven-party alliance and the Communist Party of Nepal/Maoist (CPN/M) signed an historic Peace Accord on 21 November 2006. The accord ended the 11 year violent insurgency and opened up a route towards lasting peace and sustainable development in Nepal. The peace process was further advanced with the formation of the new eight-party House of Representatives on 15 January 2007, which included Maoist representatives. On the same day, the House of Representatives passed a new Interim Constitution, marking the beginning of a peaceful, inclusive, and prosperous "new Nepal". Of particular

significance was the common commitment to work toward the social and economic transformation of the country, which is essential for sustaining the peace process and addressing the root causes of the conflict.

However, the Interim Constitution drew immediate criticism from the *madeshi* (traditional residents of the *terai* (lowlands) and *janjati* (indigenous) groups for not being sufficiently inclusive, and was followed by violent protests in the eastern *terai* region by the *madeshi* and more peaceful demonstrations by the *janjati* groups. Responding to their demands, the Government amended the Interim Constitution in March 2007 to ensure the following:

1. Establishment of a federal system through constituent assembly elections.
2. Addition of electoral constituencies on the basis of population.
3. Formation of a commission to delimit the constituencies and ensure proportional inclusion of indigenous and underprivileged groups in all state agencies or departments.

The agitating parties remained dissatisfied with the amendments and continued to pressure the Government through strikes and other actions, demanding greater inclusiveness and the establishment of an ethnicity-based federal state structure, with the right to self determination. There have also been increasing disturbances and *bandhs* (general strikes) in the *terai* region, some of which have turned violent. While the deteriorating situation in the *terai* is mainly due to clashes between opposing factions on ethnic and regional issues, it has complicated Nepal's difficult political transition.

An Interim Government, including the Maoists, was formed on 1 April 2007. This marked another fundamental milestone in the peace process. The Government was formed on the basis of the underlying commitment to hold Constituent Assembly (CA) elections on 20 June 2007 (as agreed by the eight parties). However, the Election Commission expressed its inability to hold free and fair elections by

the original date due to the lack of electoral legislation and the poor law and order situation.

The second amendment to the Interim Constitution to reflect the new election date was approved on 13 June 2007 by the Interim Legislature. It was agreed to hold the CA elections on 22 November 2007; after many delays they were eventually held on the 10th April 2008. The second amendment also included provisions for:

- Abolishing the monarchy by a two-thirds parliamentary majority.
- Allowing registration of no-confidence motions against the Prime Minister once every six months.
- Removing the Prime Minister by a two-thirds parliamentary majority.
- Parliamentary hearings on the appointment of Supreme Court justices and ambassadors.
- Barring blacklisted persons from participating in the elections.

8.3 Appendix 3: Land Systems

The land system in Nepal was initially determined by the relative abundance of land to the lesser demand for it. The law visualised land as a free commodity to be distributed among local inhabitants based on their need and the subsequent availability of land.

The Nepal Muluki Ain (legal code) stated:

"Those who possess inadequate land shall be given a proportionate share of the waste land available in that district, in such a way that each share includes land of both inferior and superior quality. But if land brought under cultivation by the strength of one's body exceeds this proportionate share, no deduction shall be made there from."

(Source: Guthi land of Suvam Devi Bramani – Bhaktapur Guthi Records 1953 (1986) –Land Tenure and Taxation in Nepal Mahesh Chandra Regmi).

Land tenure systems were introduced in Nepal and there were six major forms. The table below shows how land was divided between the different tenure systems before the 1950s. The only prevailing types of tenure at present in Nepal are *Raikar* and *Guthi*.

Table 10: Land Tenure Systems pre-1950

Tenure system	Land area in hectares
Raikar	963,500
Birta	700,080
Guthi	40,000
Kipat	77,090
Rajya, Jagir, Rakam & others	146,3336

(Evaluation of land reform in Nepal -1973, M.A.ZamanFAO)

8.3.1 Raikar

Presently, 98% of Nepali farmland operates under the *Raikar* tenure system. The name is probably derived from the Sanskrit words *Rajya* (state) and *Kara* (tax), thereby denoting land on which the state levies taxes. It means land on which taxes are payable to the Government and is listed in the official records. This distinguishes *Raikar* from other forms of land tenure such as *Birta*, *Guthi*, and *Kipat* where the occupant does not necessarily pay taxes and for the most part it was not listed in official records.

Rights on *Raikar* land are limited to occupancy rights, vis-à-vis the State; however, as these rights can be freely sold or transferred to any person, it is similar to ownership in practice. The term used for *Raikar* transactions is "*Rajinama*" literally "resignation" meaning to give up the right on the land.

Under this tenure system, the tenants had to pay land tax to the Government on an annual basis for cultivating the land. The tax used to be paid through local government agents (called Jimidar, Talukdar, Jimwal, or Mukhia). The system of collecting land tax by appointing local agents was called Jimidari (GoN, 1964). The agents

also performed the task of land administration; this left the tenants open to exploitation by the agents who retained a percentage of the collected land tax for their work (HLRC, 1995). The agents generally used to act as the landlords. Jimidari was abolished by Land Act 2021 (1964).

8.3.2 Birta

The term *"Birta"* probably derived from the Sanskrit word *"Britti"* meaning livelihood. In other words, *Birta* means land granted to individuals to enable them to make a living. *Birta* is granted to individuals by the State, for their bravery or loyalty, usually on a tax-free and inheritable basis (Chapagain, 2001). The *Birta* owner collected land tax from the tenants for cultivating *Birta* land and depending upon the grant condition, the owner paid might have to pay a certain portion to the Government. There were two types of *Birta*, non-inheritable *Birta* and inheritable *Birta*. It is evident that even non-inheritable *Birta* was often transferred to the heir after the death of the *Birta* owner (HLRC, 1995). *Birta* was not only the source of income of the *Birta* owner but symbolic of high social and economic status. More than one-third of the country's farmland was under this tenure before the 1950s.

Birta tenancy was officially abolished with the promulgation of the Birta Land Abolition Act 2016 (1957) which required all *Birtas* to be converted into *Raikar*. The policy came into effect after the formation of the Nepali Congress government in 1956; the same government was sacked by the King in 1958, precipitating the autocratic Panchayat regime and giving the green light to landowners to convert their legitimise their *Birta* land into *Guthi*.

8.3.3 Jagir, Rajya and Rakam

Jagir is land authorized to civil servants to collect and use the land tax (cash or kind) for a certain period in lieu of salary. In this system the civil servant could not sell or transfer his right to any other persons nor was it inheritable, however the landowner or tenant of the *Jagir* land could do so (HLCR, 1995). This tenure was abolished in 1951 with the end of the Rana Regime in Nepal as most of the *Jagir*

assignees were Ranas. The abolition of the *Birta* and *Jagir* tenure systems represented the disappearance of most of the feudal land barons (Regmi, 1977).

Rajya is another type of land tenure which came into effect mainly after the unification of the country by Prithivi Narayan Shah. The unification abolished the small fragmented kingdoms in Nepal, however, the former kings (the chiefs of certain territories) were still allowed to collect land tax from certain lands for their personal use. In some circumstances they had to pay a certain proportion of the collected land tax to the State. This system was inheritable but the heirs were not allowed to sell or reallocate the land to different tenants. This type of tenure was abolished in 1971 (HLCR, 1995).

Rakam originated from the assignment of land as remuneration for the performance of specific functions, mostly of a manual nature. This system was limited to the Hill region of Nepal particularly in the Kathmandu Valley (Regmi, 1977). *Rakam* was a temporary tenure and lasted until death or termination of service. *Rakam* lands were assigned to carpenters, bricklayers, mail carriers, and musicians, caretakers of religious places and similar categories of manual workers. This system of *Rakam* land was abolished in 1955 and converted into *Raikar* lands.

About 7.7 % of the country's farmland is estimated to have been under *Jagir*, *Rajya* and *Rakam* prior to abolition (Regmi, 1977). None of these tenures exist today.

8.3.4 Kipat

Kipat is the land collectively owned and cultivated by the Limbu community in the hills of Eastern Nepal. *Kipat* land could be sold or the rights transferred to members of the same community but not outside. *Kipat* land owners had to pay tax to the state for the land used as homesteads. Paddy lands were exempted from tax (Regmi, 1977). About 4% of the nation's farmland was under this type of tenure when it was abolished in 1961 with a government decree that the *Kipat* land would be converted into *Raikar* after land

measurement had been completed (Regmi, 1977). All *Kipat* lands have since been converted into *Raikar* (HLCR, 1995).

8.3.5 Guthi

The term *Guthi* probably derived from Sanskrit word *"Gosti"* or council and refers to land allocated for the purpose of covering the expenses of certain religious, charitable, cultural or social functions. *Guthis* were registered to religious and cultural institutions by the State and individuals could also offer their land as *Guthi*. Land tax is exempted for *Guthi* land. Tenure rights of tenants cultivating *Guthi* land is transferable to other tenants and is inheritable. At present, *Guthi* land is administered by Guthi Sansthan (Guthi Corporation) and about 2% of the nation's farmland belongs to this type of tenure. The Government has initiated the process of converting most *Guthi* land into *Raika*.

8.4 Appendix 4: Position of Political Parties on Land Issues

8.4.1 Nepali Congress (NC)

In the first parliamentary election of 1991 the NC triumphed and formed a single government for 3 years. They stated in their manifesto, under the title 'Agriculture, Land and Tenant's', that the legacy of the *Panchayati* regime was an incredibly unjust land system with an unscientific land ceiling, dual ownership over land, corruption in agricultural product price determining and buying institutions and a lack of training, irrigation, seeds, fertiliser and agricultural credit services. Furthermore, agricultural productivity was in decline.

Against this rather bleak backdrop the NC pledged the following commitments:

1. Establishing the right of the tenants over land. To end the existing dual ownership over land the NC government will formulate a practical policy and program that would be satisfactory to both the land owner and the tenant.

2. NC government will fix the 'productive' and 'scientific' land ownership limits and will encourage and support tenants who are farming or ready to farm within the fixed ceilings.
3. Progressive punitive tax targeting land owners who exceed the land ceiling.
4. Provide reasonable compensation to those who are willing to shift their capital from land and will also provide alternative opportunities to invest the capital in industry or the service sector.
5. Our country's limited land cannot sustain productivity in keeping with the rising population. Therefore, NC will form policies and programs to attract unproductive farmers towards alternative industries or the service sector. NC will also manage this change.
6. NC government will implement a policy of land distribution and settlement to landless and landslide victims using land acquired from the land ceiling law, river control and waste land.
7. NC government will develop cooperative and collective farming.
8. Tenant's income and rural employment opportunities will be increased through operating special agricultural programs: horticulture, vegetable farming, fish-keeping and husbandry.
9. NC is orally-committed to protecting the rights of tenants. A scientific record will be maintained to protect the welfare and will provide real tenants rights.
10. NC government will make drastic reforms on the existing structure and working style of agricultural institutions.

NC's achievements:

- NC began distributing government owned waste land to economically poor.
- Formed a Homeless Commission which provided land to 15,000 homeless families.

- Agriculture loan has been increased from 1 billion to 2 billion NPR.
- Irrigation facility for 150,000 Bighas of land in the terai.
- Nationwide program of converting *Guthi* land (land with public/religious/social ownership of) to *Raikar* (land with people's individual ownership).
- Began computerising records of the Land Revenue Office, landowners and tenants.
- Establishing tenant's ownership rights over land by abolishing dual ownership.
- Land revenue payable by farmers has halved.
- Declared that government will never take any amount as land revenue from framers.
- Provided land to more than 80,000 landless slum dwellers.
- Begun the process of dismantling the tradition of bonded labour by implementing the bonded-labour-debt-liquidation program.

NC viewed its first single-government (1991-1994) as a highly successful period from an economic development perspective and achieved many of its goals regarding social development and poverty alleviation.

NC has not felt the need to have further significant land reform following the end of dual ownership but believes that 'agricultural revolution is the base of economic transformation'.

8.4.2 Communist Party of Nepal (Unified-Marxist-Leninist) – CPN (UML)

CPN (UML) once deserved its revolutionary image and prior to the first election their politics had been very much underground and grassroots. Their slogans for the 1991 elections included: 'Let's Abolish Feudalistic Land Ownership, and Reform the Agro-Economy in a Communistic Way', 'Homes to the Homeless', 'Jobs to the Jobless', 'Land to the Tenants', and 'Respect to The Dominated'.

The CPN (UML)'s adhered to the view that Nepal had changed from a food grain importer to a food grain exporter because of unequal land ownership, increasing population, decrease in soil productivity, unsuitable agricultural technology, unfair pricing of agricultural products and an ineffective subsidy policy.

The CPN (UML) analysis was that the *Pahchayet* regime had imposed bureaucracy upon tenants in the name of land reform while the feudalistic exploitation remained the same. The party felt that during the *Panchayet* years, agricultural productivity decreased, forests were destroyed, land was captured by *Hukumbasi* (powerful feudal lords) and the environmental balance was upset.

CPN (UML) proposed the following land reform measures to redress these trends:

1. The abolition of the bonded labour tradition of Western Nepal. Provide a foundation to allow them to live respectable lives by freeing them from loans and providing them a means of livelihood including land.
2. The end to the practice of rule by the king and his relatives
3. Set wages and working hours for agricultural labour.
4. Advance agricultural technology and irrigation methods, fertilizer and harvest management
5. Provide agricultural loans at reasonable interest rates.
6. Initiate programs to increase industrial self-reliance.
7. Provide access to the necessary technical support and services within 2 hours travelling distance for farmers to encourage progressive agricultural methods.

The CPN (UML) issued these major manifesto commitments:

1. Establish tenant rights over the land they are tilling and the abolition of dual land ownership.
2. Discourage absentee landlords, justifiable land distribution, and promote idea of 'one individual, one profession'.

3. Registration of the *Birta* (rent-free land) and *Guthi* land in the title of the tenant. Government would manage the necessary expenditure for the use of the property of religious institutions for public welfare.
4. Priority should be given to the protection of the welfare of poor and small farmers.
5. Development and extension of modern and hybrid agricultural systems. Establishment of chemical fertilizer factories. Provide the services of agro-technicians locally, allowing farmers' organisations and cooperative institutions to modernise their agricultural methods
6. Initiate a public cooperative production sector to galvanise small farmers and working people to develop cooperatives as the major authority for delivering agro-related services.
7. Optimum and minimum land ownership limit to be determined practically and scientifically.
8. Land ownership identity card for each land owner.
9. Registration of land in the title of those tenants who are tilling the land but do not have land certificates. Registration fee waived where necessary to encourage the land distribution program.
10. Revolutionary land reform program integrated with rural employment and environmental consideration.
11. No compensation for illegally owned land; such land should be distributed to landless tenants.
12. Establishment and operation of a bank in the rural areas to set up industries in those areas and to utilise the capital gained from the land. Agricultural insurance system to protect against the risk and uncertainty in the agricultural sector.
13. Identification of the real slum-dwellers; excess land collected after implementing land limit program, *Ailane* land (tillable land without ownership), land unsuitable for the forest, and *Parti* (Barren) land utilised to settle the landless.

14. The pressure on agricultural land must be reduced by providing employment opportunities in non-agricultural sectors.

8.4.3 Rastria Prajatantra Party (RPP)

Properly entered the political arena for the 1994 election the RPP, consisting of ex-pancha (politicians of the *Panchayati* regime), presented themselves as liberals with 'Nationality and Democracy' as their slogan. In the party's 1994 electoral manifesto, it announced itself as an engineer against poverty and prioritised rural development, proposing that land in specific areas of the Terai and Hills should be tax free.

In 1994 the RPP became part of the coalition government alongside the NC and the CPN (UML). The RPP, as part of the coalition, vowed to abolish dual ownership over land and expressed a commitment to solving the problems of the landless. The main thrust of RPP's position was to use land reform to improve productivity and social justice.

The following list details their major commitments:

1. Provide families with the minimum amount of land to offset absolute poverty by ending dual ownership of land.
2. Review existing land limits and reaching national consensus on appropriate limits. Sell the excess land at local market price payable over 5-6 years to the farming families who do not have access to the minimum amount of land required for subsistence. Loans would be granted to the farmers to buy such land.
3. Introduce a policy to provide land certificates to slum-dwellers within 18 months, on the basis of tilling.
4. Prepare a special program for freeing bonded labourers.
5. Establish chemical fertilizer factories to make the fertilizer readily available to all.
6. Provide sufficient irrigation facilities through small and large-scale projects.

7. Reduce electricity charges for agricultural production.
8. Ensure availability of hybrid seed and agro-technical services through VDCs and improve farmers' lifestyles by bringing in the 'Green Revolution' in agriculture.

8.4.4 Other Political Parties

The minor political parties represented in parliament have also made commitments towards the land reform program.

8.4.4.1 Nepal Majdur Kishan (NMKP)

The NMKP identified the following major problems:

1. Uneven land distribution
2. Decreased agricultural production
3. Food insecurity

The NKMP issued the following commitments:

- Implement the land limit strictly and make the tenants landowners.
- Legally protect tenancy rights of all immediate family including adopted sons, daughters, daughters-in-law and wives.
- *Guthi* land to be registered to the tenants.
- Nationwide research would be conducted alongside the undertaking of technical and practical discussions preparing the way for progressive land reform policy.
- Construct a fertilizer factory in the country within 5 years.
- Promote scientific and organic farming methods to replace traditional ones.
- Provide of interest-free loans for purchasing tractors or other technical equipment in districts and through VDCs.
- Provide agro-specialist's to every region.

8.4.4.2 Nepal Sadbhawana Party (NSP)

The NSP is committed to the expansion of irrigation facilities, management of modern seed and fertilizer, the provision of agricultural loans with subsidized interest rates especially to marginalized farmers and the abolition of dual ownership with consideration given to tenants' rights and welfare.

8.4.4.3 Samyukta Janamorcha Nepal (SJN)

The SJN expressed its commitment to the provision of land to tenants; the provision of tools, seeds and fertilizer for the modernization of agriculture and the promotion of indigenous industries.

8.5 Appendix 5: Policies of International Agencies

8.5.1 Asian Development Bank

The ADB is a multilateral development bank owned by 67 members, 48 from the region and 19 from other parts of the world. The ADB's main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance. The ADB's annual lending volume is typically about $6 billion, with technical assistance usually totalling around $180 million per year. In 2006, lending volume was $7.4 billion, with technical assistance at $241.6 million.

The ADB is one of the key international institutions providing bilateral assistance to the Government of Nepal and impacting land administration through financial and policy support.

The ADB's assistance to Nepal began in 1968; as of 31 December 2006, cumulative lending to Nepal totalled $2.3 billion, while technical assistance projects totalled $120.37 million. The ADB's assistance is focused on agriculture and rural development, education, water supply and sanitation, urban development transport, energy, and public and private sector governance.

The ADB's current assistance portfolio consists of 23 ongoing loans (19 projects and 4 program loans) and four grants with an overall net loan amount of approximately $686.8 million. Of the 23 ongoing loans and four grants, 19% are in agriculture and rural development, 27% in water supply and sanitation and 14% in education.

Two key points in the ADB's country strategy paper for Nepal over the coming years are:

1. Increased commercialisation of agriculture
2. Strengthened rural financial services

The ADB recently (October 2007) committed a grant of $350,000 to Nepal's Strengthening Land Administration Services project which is estimated to cost a total of $400,000, the balance being payable by the Nepali Government. The grant will assist the country in developing a more reliable, fair and sustainable land administration and management system by modernising and improving business processes and developing a road map for a national comprehensive land policy; the land policy will provide strategies for managing land resources for sustainable economic and social gains. The grant will also allow the Government to move from a manual, paper system of documenting land rights to computerised data storage which will vastly improve work flows and service.

8.5.2 World Bank (WB)

Poverty reduction is the main objective underlying the WB's activities in Nepal. The WB assists Nepal in its development with funds and analytical and advisory work.

The WB's method of operation is not to implement "World Bank projects" but to provide financing and advice for projects which are owned and supported by the Nepali people, and which are a logical part of a comprehensive and efficient overall development agenda. As such, the WB's Country Assistance Strategy (CAS) for Nepal, 2004-2007, builds upon Nepal's own strategy to reduce poverty. The WB strategy focuses on supporting four core pillars, identified in Nepal's PRSP:

1. To achieve sustained high and broad-based economic growth, focusing particularly on the rural economy.
2. To accelerate human development through a renewed emphasis on effective delivery of basic social services and economic infrastructure.
3. To ensure social and economic inclusion of the poor, marginalized groups, and less developed regions.
4. To vigorously pursue good governance, both as a means of delivering better development results and ensuring social and economic justice.

In infrastructure, the WB supports projects that help promote demand-driven irrigation schemes managed by local water user groups and water supply schemes which reduce the time women spend collecting water. A program to help maintain and rehabilitate rural roads in the poorest and most remote areas of the country, reducing time and cost for moving goods and bringing people closer to schools and health centers is also underway. A WB-financed project is increasing access to electricity for the population in rural areas, while promoting the development of Nepal's hydropower potential in a sustainable and environmentally sound manner, and encouraging private participation to improve efficiency in the power sector. In the financial sector, WB-financed projects are helping improve the supervisory functions of the central bank and stem the losses at two of the largest public sector banks.

The WB has several ongoing projects in Nepal including the Poverty Alleviation Fund which is a $25 million fund approved in November 2006 which has 26% of its funds allocated to agriculture, fishing and forestry (irrigation and drainage).

8.5.3 Land Bank

In spite of a reduction in poverty levels from 42% to 31% between 1996 and 2004 (WB), the living conditions of most Nepalis is still below acceptable levels. Donor agencies have contributed millions of rupees in the name of development yet the poor people still suffer from poverty and marginalisation. Poverty alleviation had been the

key focus for development intervention in the past but it was not linked to land reform. Policy makers and politicians took some time to come round to supporting the equitable distribution of land resources as initially their attention remained limited only to the technical aspects of agricultural production. Lack of access to land is one of the major obstacles to bringing the benefits of development to the hard-core poor and this is beginning to be recognized by the international agencies.

Land is closely associated with social progress as it can be used as collateral for financial assistance and can guarantee access to healthcare and education. In Nepal there exist large numbers of poor people who are bound to physical labour for nominal wages and cannot provide enough food for their families. They are compelled to become *Kamaiya* and Haliaya.

To address some of these issues and to allow for investment in the land, the APP, with the support of the WB, proposed the establishment of a Land bank to buy land from those who agree to sell. The first phase is a three year pilot initiative costing NRP 2 billion. The Land Bank will provide loans to around 25,000 landless people which will be recovered in small instalments over 15 years.

Many land rights activists are against the burden of debt this will place upon the country and its most disadvantaged people. Rather than paying the already wealthy landowners with money the poor don't have the government should uphold its previous commitments to enforce prescribed land ceilings and redistribute the excess land and to give tenants' half the land they have tilled for many years and without benefit.

CSRC and other land rights campaigners would have been more accepting of the Land Bank if there were no other alternatives for providing land. However there are several preferable options still open to the government:

- If current laws were strictly enforced by the Ministry of Land Reform and Management, hundreds of thousands of families would have legal access to land.

- Landowners systematically threaten tenants and deny them receipts for their rental payments to prevent them claiming their tenancy rights. Instead of turning a blind eye, these claims need to be verified and any injustice legally rectified.
- Tenants should be given the option of buying the remaining 50% of the land they till from the landowner (subject to mutual agreement). This would be beneficial to productivity by reducing fragmentation.
- Land ceilings should be enforced and the excess land should be given to landless people on a concessionary basis.
- It is estimated that around 20% of arable land lies fallow. This fallow land should be brought into use. If the landowners do not cultivate their land, it should be given to the farmers who will cultivate it.
- There are large areas of public land which people have been occupying for decades. The occupants are still referred to as landless. It would be prudent if government were to introduce a policy framework to register these occupied public lands in the name of the farmers and reducing the number of officially landless people. Investment and improved productivity would follow once people become official landowners.

There are many options and first steps available to the government to address land distribution. The Land Bank proposal mainly benefits wealthy landowners and in many cases would 'offload' undesirable land with the poor picking up the bill.

8.6 Appendix 6: The Land Reform Act 1964 (comprehensive review)

8.6.1 Abolition of *Gimidari*

The Land Act abolished the *Gimidari* and withdrew the rights of the *Gimidars*. Henceforth the land owned by the *Gimidars* would be registered to them and the land tax would be collected by the Land

Tax Office (Clause 3) and no longer by the *Gimidars*. This helped reduce the exploitation of tillers and farm workers.

8.6.2 Fixation of Land Ceiling

The Act fixed a land ceiling as the maximum amount of land that a family could own and cultivate. Any land in excess of the ceilings is acquired (clause 15) by paying the appropriate compensation (clause 19) to land owners and distributed to local landless people with priority to freed *Kamaiya*, *Dalit*, *Janajati* (Clause 21) revised by fifth amendment of the Act in 2001. The land is not distributed for free but the tenants are loaned the amount to buy the land (at market rate) by the government and agree to pay 5% interest on principle amount (Clause 22). The land distributed in this manner cannot be sold by the owner for a period of 10 years or until all instalments have been paid whichever is longer (Clause 23, Fifth Amendment). However this was never implemented and exists only on paper.

The Act was phased in across different parts of the country. Initially it was implemented in 16 districts before gradually covered the whole country by 1966. This phased approach gave land owners ample time to conceal excess holdings or to register it in the names of their relatives. As a result much of the expected land was not acquired; only 1.5% (29,124 hectares) of the total agricultural land was redistributed.

The ceiling was revised and lowered in the fifth amendment of the Act but was not properly implementation. Current ceilings are still much higher than those recommended by HLRC in 1995.

8.6.3 Protection of the Rights of Tenants

The Land Act was a positive initiative towards the security of tenants and tenancy rights. It protected the tenants against eviction, entitled them to one quarter of the land they cultivated (or the monetary equivalent), granted the legal registration of tenancy and provided for tenants to take their grievances to the law courts. The act also fixed the tenants' rent at 50% of the principal crop. While the act ensured the rights of the tenants, it also created the situation of dual ownership where the tenant and the land owner could both lay

claims to the same piece of land. The tenancy right could not be sold but could be transferred to the tenant's sons (Clause 26).

The fourth amendment of the Act in 1996 increased the tenants' entitlement to 50% (Clause 1, Sub-clause 5) and would provide a land entitlement certificate within two years (Clauses 26-c to 26-c3). This formally terminated the situation of dual ownership of land; in reality the problem of dual ownership of land still exists and has been acknowledges in the tenth plan.

8.6.4 Compulsory Savings

Land Act 1964 also provided for a compulsory saving scheme. The main purpose of the scheme was to generate funds for agricultural credit. It required all farmers to deposit a certain proportion of their produce with the local ward committee, as saving in kind. Later, equivalent cash deposits were allowed. The saving scheme would mature in five years, after which the respective farmers would receive the full balance plus the interest, paid at a rate of 5% per annum. The interest could also be received at any time between the second and fifth years of the scheme.

The compulsory saving scheme had the potential to become an effective instrument for consolidating funds and mobilizing them for agricultural credit, necessary for buying essential farm equipment. However, soon after the scheme started it suffered from massive irregularities and the misappropriation of funds. This large scale abuse and corruption led to the scheme's premature termination.

8.6.5 Land Use, Land Fragmentation and Land Consolidation

The Land Act 1964, and especially the Fifth Amendment in 2001, realises the importance of proper land use planning. It is also aware of the consequences of farm land fragmentation and the positive implications of land consolidation to improve productivity.

The Fifth Amendment (Clause 51, Sub-clause 2) states that the government can instruct proper land use by issuing notice. Land use would be determined by the nature of the land, topography, soil fertility, climate and other environmental factors. The land use

programme would be implemented by the Land Use Council (Sub-clause 3). The Act prohibits the use of land, for any purpose other than that stipulated, in the areas where land use programme is implemented except with the permission of the designated committee (Clause 51).

Similarly, there are also provisions for land fragmentation control, land consolidation and cooperative farming which the government can implement for the purpose of improving the productivity of agricultural land (Clause 51). The Act also has provision for concessions to farmers practicing collective farming in a group of 10 or more farmers (Clause 51).


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