

Land Reform in Nepal

Problems and Prospects

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Jagannath Adhikari

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Jagannath Adhikari
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**Dedicated to
all hard-working farmers
of Nepal**

Table of contents

Acknowledgement	ix
Preface	xi
Foreword	xiii
Chapter 1: Introduction	1
1.1 Access to land and poverty reduction	2
1.2 Land reform and access to land	7
1.3 Globalization and land reform	13
1.3.1 Threats of globalization	14
1.3.2 Opportunities globalization offers	18
Chapter 2: Land Ownership and Access in Nepal	21
2.1 Types of land tenure in Nepal	22
2.2 Struggles for land rights	31
2.3 Land availability and distribution	34
2.4 Women's access to land	41
2.5 Landlessness and landless groups in Nepal	43
2.6 Land fragmentation and consolidation	45
2.7 Tenancy rights and tenants (mohi)	47
2.8 Fallow land	49
2.9 Guthi land	49
2.10 Land deprived communities in Nepal	51
Chapter 3: A Brief Review of Land related Legislations and Policies	59
3.1 Reform measures in the 1950s	59
3.2 Reforms in the period from 1960 to 1990 (Panchayat Political Period)	60
3.2.1 Impact of policies and programmes	64
3.3 Reforms during 1990 to 2006	68
3.4 Reforms and proposed reforms after 2006	70
3.4.1 New prospect after the constituent assembly (CA) election	71
3.4.2 Gender perspective in recent policies	72
3.4.3 Indigenous people's perspective in national policies and laws	73
3.5 Other laws and policies related to land	74

Chapter 4: Activities for Increasing Access to Land and Land Rights in Nepal and Lessons Learned	79
4.1 Approaches to improve access to land	79
4.2 Activities and modalities of implementation	81
4.2.1 Community Self-reliance Center (CSRC)	81
4.2.2 Modalities of work done by CEPREAD	83
4.2.3 Modalities of Plan Nepal	83
4.2.4 Actionaid Nepal	84
Chapter 5: Challenges for Land Reform in Nepalese Context	87
5.1 Defining land reform	87
5.2 Defining land rights	88
5.3 Defining a farmer	91
5.4 Debate on the efficiency of small size	92
5.5 Finding a modality of land reform:	
market-based v/s state-led land reform	96
5.6 Determining the land ceiling	99
5.7 Determining the viable size of land holding	100
5.8 Developing non-farm activities and guaranteed employment v/s access to land	102
5.9 Protecting the rights of indigenous people and women	102
5.10 Developing and improving the capacity of institutions and human resources for land reform programmes	104
5.11 Local v/s foreign investment in land	104
5.12 Land reform for food sovereignty	105
5.13 Developing a feeling of security of property (land)	106
5.14 Tenurial security Vs land distribution in the context of high mobility	108
Chapter 6: Towards Agrarian Reform	111
6.1 The principal aims of agrarian reform	112
6.2 Priority aims in agrarian reform	116
6.3 Stakeholders in agrarian reform:	
Their roles, responsibilities and strategies	117
6.3.1 State	117
6.3.2 Civil society	124
6.3.3 The rightsholders	124
6.3.4 Media	125
6.3.5 Political parties	126
6.3.6 The donors	126
6.4 State restructuring and agrarian reform programs	126
Chapter 7: Conclusions and Recommendations	129
References	133

Agreement between 'farmers' organizations' of Seven Political Parties for land reform in Nepal	48
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Tables:

Table 1.1 : Poverty measurement by land ownership in Nepal, 1995-96 and 2003-04 (rural areas only)	5
Table 1.2 : Concentration in corporate power: control of top 10 companies on world's agricultural market share (in 2005)	16
Table 2.1 : Area under various forms of land tenure, 1952	28
Table 2.2 : Various peasants' movements in Nepal	33
Table 2.3 : Availability of land in Nepal in the last 40 years (1961-2000)	35
Table 2.4 : % age distribution of number and area of land holdings by size of holding 1961-2001	37
Table 2.5 : Food insufficient from own production (% farm holdings not able to feed themselves from their own production) in 2001	40
Table 2.6 : Farm size other characteristics	41
Table 2.7 : Land ownership of male and female in 2001	42
Table 2.8 : Access of indigenous peoples to land (% distribution of household owning self-operated land by farm size and ethnicity, 2001. Semi-landless (<0.2 acre), Marginal cultivators (0.21-1.00 acres), Small cultivators (1.01-2.00 acres), Medium cultivators (2.01-10.00 acres), Large cultivators (10.1 + acres)	44
Table 2.9 : Land fragmentation in Nepal in 2001	46
Table 2.10 : Land fragmentation and area under in each holding and parcel of land (area in ha) in 2001	47
Table 2.11 : Structure of tenancy in Nepal 2001	49
Table 2.12 : Kamaiya households and population	51
Table 2.13 : Household population of freed Kamaiya and their classification by the government	53
Table 2.14 : Employment generation in farms in 2001	54
Table 2.15 : % holdings employing different types of labourers in 2001	54
Table 3.1 : Ceiling in land ownership as fixed in 1964	62
Table 3.2 : Ceiling on tenancy as fixed in 1964	62
Table 3.3 : Land obtained from land ceiling fixed by Land Act 1964	62
Table 3.4 : Agricultural rents in Kathmandu Valley (Pathis/Ropani) and Terai (Mounds/Bigha) as per the 1964 Act	63
Table 3.5 : Rates of compulsory savings in different regions	63
Table 3.6 : Land Area Tilled By the Tenants	67
Table 3.7 : Land ceiling fixed in 1964 and proposed in 2001	69
Table 3.8 : Proposed ceiling on land for the Kingdom of Nepal as recommended by Badal Commission in 2051 BS (1995)	69

Acknowledgement

This monograph is intended to facilitate discussion on the crucial topic of land reform, which has been a highly controversial issue in recent times. This (post-Jana Aandolan II) is perhaps the most opportune time to initiate debate on issues related to land reforms, and the discussion should continue in the future as well because changing times and situations call for revisions in the existing policies. Convinced that the ideas and issues being debated would be useful for the Nepali context, I have tried here to present them in a systematic manner.

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Jagannath Adhikari
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Preface

Certain historical developments create an enabling atmosphere for land or agrarian reforms. Invariably, these events occur after major political upheavals. Political change and a new environment created by it provide ripe political conditions for formulation and implementation of newer land reform policies all over the world. Radical land reforms in Taiwan, South Korea and Japan also took place after the military defeat of Japan. The USA was very concerned about land reforms efforts in these countries because of the apprehension that failure to push through desirable reforms could lead to a peasant revolt, creating a climate suitable for the spread of communism. Successful agrarian reforms in Vietnam, China, Mexico and Bolivia were implemented in a climate of revolution after the World War II. Appropriately timed land reforms played a key role in the national economic development of those countries. Land reforms paved the way for agricultural development, which in turn led to industrial development in these countries.

Nepal has passed through a similar phase, too. Land reforms started in Nepal after the downfall of the Ranas in 1950. Two prominent political parties – Nepali Congress and the Communist Party of Nepal – had an agenda of ‘giving the land to the tillers.’ King Mahendra, who seized power in a coup d’état in 1960, also pronounced populist land reform measures in 1964 as an instrument of appeal to the common people. Later on, it was revealed that the King’s ideas of land reforms were merely meant to distract public attention and anger from the new political development after take over. Prime Minister Sher Bahadur Deuba also announced radical land reforms in 2002 in the face of Maoist insurgency that had started in 1996. The Jana Aandolan II in 2006 and the subsequent election of Constituent Assembly in 2008 for writing a new constitution have produced a new climate for initiating land reforms in Nepal. As a result, fresh concerns have been raised on the issue of land rights. To repeat, it is an opportune time for the people and the government of Nepal to come up with a viable land reform policy. This publication intends to provide key stakeholders, including the government and civil societies, with some guidelines in light of the past and experiences from other countries.

Given the concerns at hand, it is felt that some documentation is essential to initiate debate on land reforms and to understand what worked where and what did not. Moreover, there has been a significant change in the socio-economic conditions of the people, but the land supply has remained more or less constant. This report deals with these very pertinent issues. It is expected that this monograph will enhance the key actors’ understanding of land reforms issues and problems associated with them.

Foreword

At this particular historical juncture, the 'Land and Agrarian Reform' has become a key political and development agenda in Nepal. Major political parties as well as the civil society movements seem to have recognized the 'land issue' as a crucial factor for the democratization of Nepali society. Most importantly, Haliya, Kamaiya and various other land-rights deprived groups' own conscious and spontaneous mobilizations from the community to the national political arena have significantly contributed to take the issue to the surface.

Following its significant mention in the Comprehensive Peace Accord of November 2006, the issue of 'scientific land reform' has also been prominently pronounced in the Interim Constitution of 2007. The ongoing Interim Three-Year Plan (2007-2010) has included plans and provisions on land and agrarian reform initiatives. The latest development on the part of the state has been the formation of high level 'scientific land reform' commission. These are quite significant developments towards addressing the issue of land and agrarian reform.

Land has always been perceived as a hot political issue, as it has a lot to do with the given social power structures. At the same time, equitable distribution of land is vital for inclusion, equality and social justice. It is significant because disadvantaged people like Dalits and highly marginalised Janajatis consider access to land as their key campaign demand. However, historically the State has not paid due attention to this issue. Denial of land rights has immense consequences not only in terms of denial of access to resources, but in terms of denial of rights to culture, religion, livelihood, dignity and life itself.

On the other hand, there is still enormous work to be done to develop a national consensus, as well as a clearer strategy to implement the pro-people land reform. The reform must facilitate the access of poor and marginalized people to land; on the other hand, it must increase the agricultural production and productivity, which should create the foundation for the development of non-agricultural economic sectors.

In view of all these concerns, this monograph, "Land Reform: Problems and Prospects in Nepal," has been published with the hope that it would bring to the fore the discussions and debates and help to come up with solutions to the current problems in land reform.

ActionAid Nepal has been working on land-related issues for more than a decade in partnership with grassroots land rights organisations with an objective of supporting the land-rights deprived groups to ensure their right to land. In this context, ActionAid Nepal believes that the publication of this book would be very pertinent and appreciates Mr Jagannath Adhikari for his hard work to write this book.

Bimal Kumar Phnuyal
Country Director
ActionAid Nepal
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Chapter

1

Introduction

The majority of Nepali population depends on land for their livelihoods. For them, land holds substantial value. People's access to good land is becoming increasingly difficult on one hand and land prices are rising by the day on the other. As the population increases, there is an increasing demand for land in the country, but there is a limited scope to increase land availability. On the other hand, once the land rights for the weaker section are lost, it is difficult to re-establish because access and control over resources is directly linked to power. Therefore, the people's land rights should be secured before they become landless squatters and through the urban centers, displaced from their land and homesteads.

At present, there is a need to achieve the twin goals of land reforms – ensuring agricultural development and protecting the vulnerable groups from deepening poverty. To achieve these goals, balanced access to land and programs to that effect are critical. The vulnerable population may be protected only when food security and the need for shelter are recognized as fundamental rights of the people. It is therefore important for the people, especially the land-dependent people, to have the right to land. This is particularly so in Nepal, where domestic off-farm employment is limited because the country is not industrialized and the service sector is limited to a few areas.

Land and agriculture have played a very important part in Nepal's social, economic, and political life for centuries. Agriculture is the main source of livelihood for a great majority of the population. The agriculture sector contributes around 40% to the GDP and provides employment to more than two thirds (65.6%). In the past five decades, poor farmers and tenants initiated various movements to secure their right to land. The issue of land right has become a political slogan for Nepal's political parties, irrespective who they are. But there has been only limited intervention to address the issue.

1.1 Access to land and poverty reduction

Access to land is still an important determinant of rural poverty. Poor access to land means more poverty. The landless and people without land security constitute the poor population in rural areas. Economic analysis has long revealed the importance of secure property rights for economic growth, and for this growth to translate into poverty reduction. The other benefits for the poor people with improved access to land include:

- Improved household food security in both subsistence (for food) farming areas or commercial farming areas (for income to be converted to food).
- Land provides a cushion for the poor to fall back on when non-farm opportunities are not available. This is the case in areas where land is relatively less important for food security. But due to growing fluctuations in market and economic growth, partly owing to structural adjustment programs and neo-liberal policies, access to land is also important for these people.
- To provide a security for shelter or settlement.
- Permanency of shelter can be a basis for membership to organizations, citizenship, services and participation in developmental activities or politics. For example, land ownership has always been a basis for the citizenship. Landless Nepali people, especially in the Terai, have no citizenship certificates. As a result, they can neither participate in the political process nor can they avail of services from the public or non-governmental organizations.
- Equitable land distribution is a precondition for economic growth, peace and harmony, which again is important for sustained development – as is learnt from land reforms in Japan, Korea and Taiwan. The decade-long armed conflict – partly caused by discriminations and unequal access to land and resources – has served a severe blow to the Nepalese economy and will continue to have adverse impacts for some time to come.

In developing countries like Nepal, land is considered to underpin all social, economic and political development of a person or a household. Therefore, access to land also defines one's inclusion (or exclusion) in social, economic and political processes. There has been a plethora of literature on the nexus between land ownership and access to opportunities in social, political and economic spheres. Lack of access to land is linked to social exclusion. It forces landless poor people (or those cultivating other's land) to accept the hegemonic relationship with the landlords or the owners of the land.

In the agrarian economy, land is central to income and livelihood. Having less income means wage earning in other places or in other's land. Lack of income and livelihood opportunities and continuous work on low wages have made landless people not able to take part in the social and political processes within the community or at larger levels. In similar lines, Sen argues that 'social exclusion can, thus, be constitutively a part of capability deprivation as well as instrumentally a cause of diverse capability failures (2000:5). Regarding landlessness and social exclusion Sen (2000: 13-14) writes:

Landlessness is similarly an instrumental deprivation. A family without land in a peasant society may be deeply handicapped. Of course, given the age-old value system in peasant societies, landlessness can also have constitutive importance in a world that values a family's special relationship with its land; to be without land may seem like being without a limb of one's own. But whether or not a family attaches direct value to its relation with its own land, landlessness can also help to generate economic and social deprivations. Indeed the alienation of land has been – appropriately enough – a much discussed problem in the development literature.

Access to land is also essential to enable rural poor to have equal opportunities created by market. Now it is seen that the rural poor do not share these opportunities equally as they do not have access to land. Their access to land will make them able to take some of these opportunities created by the market. Generally, only the landed families get these opportunities. Education and access to land are the one that leads to development and economic growth. Lack of social opportunities like land reform and unavailability of micro-credit can also have similarly exclusionary effects. Lack of land is also means lack of opportunities to avail education, credit and even migration to other areas. It is seen that poorest of the poor in Nepal (bottom 20 %) and women are not able to move out for employment and income because they lack land ownership which helps in this process by making them able to get credit.

In the development field, there has been an effort to relate social exclusion with other concepts like poverty, deprivation, vulnerability, entitlements and social capital. The concept of social exclusion is considered useful because, firstly, it deals with multidimensional characteristics of deprivation like unemployment, income, gender, ethnicity and participation. Secondly, it focuses on processes, and on mechanisms and institutions that exclude people (de Haan, 1998). Sen (2000) argues that exclusion is better understood if it is linked with capability deprivation. He meant to say that concept of poverty should be broadened beyond 'income' to include multidimensional aspects of poverty. This multidimensionality of poverty is better understood in terms of capability deprivation, i.e., lack of capability to live a minimally decent life. And social inclusion or exclusion is clearly linked with capability deprivation, if not being

excluded from social relation is considered to be of good value. Exclusion is a process through which deprivation occurs.

While dealing with tenurial issues, the terms and conditions of tenure is also essential to understand. In this sense, Sen's concept of favourable and unfavourable inclusion is also relevant. This is especially so if we look into the tenurial relationship between landowners and cultivators or tenants. Technically, cultivators are considered to have access to land even if the tenurial terms and conditions are not favorable to them. Such unfavourable terms and conditions further deteriorate their socio-economic position. This has been so throughout the history of land tenure in Nepal (explained later). The marginal groups who have cultivated land on unfavourable tenurial conditions have to dispose off their land and became bonded or semi-bonded labourers. A bonded labourer may suffer particularly from unequal inclusion (lack of freedom to go elsewhere), may face another exclusion in employment (Sen, 2000). In Nepal, it is seen that a large number of peasants migrated to India, Burma, Bhutan and Sikkim until 1960s because of unfavourable inclusion in land tenureship.

On the question of why landlessness has occurred (or is occurring), one has to look into the 'exclusion theory' also. This will help us to know why there is exclusion in access to land. In the context of Nepal, generally, the political economic approach is used to explain it. It is akin to 'monopolistic' model developed by Silver (1998)¹, which calls for changing power relations and state's responsibility to change this relation through democratic means. In Nepali society, the exclusion is based on monopoly paradigm. The powerful groups are said to form boundaries and exclude members of other groups to have access to resources. The political, economic and social power they have is used to change the policies and practices in their favour and exclude others disadvantaged and marginal class (see Ghimire, 1992). The groups are formed on the basis of caste (jati) and janajati, class, gender, and geography.

NLSS survey of 2003-04 reveals that poverty is concentrated among the land-dependent but landless households. The poorest households are those headed by agricultural wage labourers. The incidence of poverty among this group was almost 56 % in 1995-96, and it remained high in 2003-04 at 55 % (nationally the poverty rate declined from 42 % in 1995/96 to 31 % in 2003/04). This group is a small and declining share of population. It is made of 6 % of the population and 11 % of the poor in 2003-04. Their share of the population declined from 12 % in 1995/96 to 6 % in 2003/2004 (CBS, 2006). The second poorest group comprises the households headed by 'self-employed in agriculture'. Poverty in this group declined from 43 % in 1995-96 to 33 % in 2003-04. Two-thirds of poor are in this group. The incidence of poverty is low and rapidly declined in the groups engaged in trade and professional skills (CBS, World Bank, DFID and ADB, 2006: 12)

The study has also revealed that land ownership reduces the probability of being poor in rural areas. The incidence of poverty among households that own 1 ha or less of land (two-thirds of rural households) is close to 50 %. The proportion of households with smaller land holding increased over time, while the proportion with larger land holdings (2 or more hectare) declined substantially, from 16 % to 11 %. Poverty declined more for the households with larger land holdings, indicating increasing returns to land (CBS, World Bank, DFID and ADB, 2006: 14).

Table 1.1: Poverty measurement by land ownership in Nepal, 1995-96 and 2003-04 (rural areas only).

Landholding (ha)	Poverty head count rate			Distribution of poor			Distribution of population		
	1995-96	2003-04	Change (%)	1995-96	2003-04	Change (%)	1995-96	2003-04	Change (%)
Less than 0.2	48	39	-17	23	25	10	21	22	7
0.2 to 1	45	38	-15	44	51	17	42	47	11
1 to 2	39	27	-29	19	16	-14	21	20	-3
More than 2	39	24	-39	15	8	-49	16	11	-32
Total	43.3	34.6	-20	100	100	-	100	100	-

(CBS, World Bank, DFID and ADB, 2006: 14)

Land also has links to other opportunities that have helped in reducing the poverty. For example, education achievement is directly related to land ownership. In NLSS survey, it is seen that incidence of poverty declined for all educational groups, with most dramatic decline in households headed by someone with 8-10 years of schooling. Similarly, landless and poor households have a tendency to have higher family size. Poverty is also higher in larger households and in households with more small children.

Dalit and Hill Janajatis are the ones who have smaller size of land holdings or comprise a larger proportion of households being landless. Poverty rates among these groups remained higher than the average. In 2003-04 poverty rates were highest among Hill and Terai Dalits (46 %) and Hill Janajatis (44 %), though poverty rates have also declined in both groups (Ibid 13-14). Generally, excluded groups in Nepal own either no land or marginal amount of land. Most of landless people of Nepal, which account about 29 % of population, are Dalits and highly marginalized ethnic groups. Women's access to land is also very limited. Only 10 % women have ownership of land and that too is almost of half the size of the landholding owned by men².

Even though the role of non-farm sector is increasing in the national and household economy, land still forms a main basis for the livelihood of the people, particularly the excluded groups like Dalits, highly marginalized communities and women. Their access to good land is becoming increasingly difficult. As the population increases, there is an increasing demand for land in the country, but there is a limited scope to increase land availability. On the other hand, once the land rights for the weaker and excluded section are lost, it is difficult to re-establish because access and control over resources is directly linked to power. The landless and people without land security constitute the poor population in rural areas. The access to land provides permanency in settlement and this is linked to obtaining citizenship and services and participation in political, social and development activities. Therefore, it provides avenues for more inclusion and peaceful co-existence. Lack of access to land has also been a main cause of conflicts in the world, including that of 'Maoists conflict' in Nepal.

There are social barriers for the excluded to have access to or control over land because of the deeply rooted feudal systems shaped by customary beliefs and highly skewed power relations. For example, women and indigenous communities are cultivators to ensure household and national food security and to protect and promote biodiversity and environment. But they are usually denied the land titles. The same case applies to the Dalit communities. Even though they had been land cultivators as ploughmen and wage labourers at a time when there was plenty of land, they were denied the land ownership and control because of their castes and traditional division of labour. They continue to remain as ploughmen (Haliya in Tarai or Hali in the hills), which is considered as a semi-bonded labour. Similarly, women were denied the land title, because they have to, according to tradition and legal provisions, depend on male. However, some slight progress has been achieved in this regard in recent times.

Land distribution in Nepal is skewed. There are also various discriminations in Nepal based on land. This is more related to historical process after the unification of country. Land was utilized as a way to gather political and military support by the government or the state. As a result, a larger part of production and good quality land has been distributed to powerful people in the forms of grants. For example, 47 percent of land-owning households own only 15 percent of the total agricultural land with an average size of less than 0.5 ha, while the top 5 percent occupies more than 37% of land. Inequality in land distribution as measured by Gini Coefficient was 0.544 in 2001³. At present only 10% women own some land, and they own, on average, less than 0.1 ha, which is considerably lower than the average land holding of about 1 ha/man. Women constitute a large portion of the economically active population engaged in agriculture, both as farmers and as farm workers, and play a crucial role in ensuring household food security, despite enjoying very limited rights to land⁴.

1.2 Land reform and access to land

Land reform here means increasing the ability of rural poor and other socially excluded groups – including intra-household exclusion, issue of gender, widows, and female-headed households – to gain access to land and exercise effective control over it upon acquisition. It also means increasing their access to other complementary inputs, such as, credit, irrigation and know-how and services required for increasing the production, land productivity, conservation of soil and resources, and marketing of products. This helps in making stable and predictable relationship of agricultural families with their land. This will benefit mainly the following groups: those who lack ownership of the land that they cultivate (tenants or farm workers, share-croppers, leaseholders), those who occupy public lands (squatters), and indigenous groups who lack demarcated land.

Despite various components of land reforms as discussed above, the core component is ‘access to land.’ Providing access to land also means redistribution of land, even though the forms or modalities of redistribution may be different. There is a growing concern that land redistribution will reduce the farm size, and it will create many small farmers and provide disincentives for large, efficient and commercial farming or agro-business. There is also a thinking that smallholder farming is inefficient and do not provide an economy of scale for investment and total commitment. But small family farming has been the backbone not just in Nepal but also in many other countries. It is also argued that productivity has been highest in the farms controlled by single families. The ‘economy of scale’ concept is considered hardly appropriate in developing countries like Nepal, where there is plenty of cheap labour. For example, Vietnam, which has the smallest farm-size (0.2 ha/family), supplies a significant proportion of rice (12%) in the world market after its consumption. To reduce the disadvantage of small farms, it is increasingly recognized that resources are to be used intensively and modern technology suitable for such farms needs to be developed. If this can be done, then family farming will be the most suitable form of farming in terms of conservation of resources and sustainable farming. Therefore, other supports are also equally important along with improving access to land or land redistribution. This will also provide social justice in the ownership and control of land and restoration of alienated land rights. This will eventually boost agricultural production. More about it will be discussed in the later chapters.

In countries that have effected land reforms, the reform has helped reduce poverty significantly, irrespective of the extent of success. If these countries had not adopted land reforms at some point in the past many more people would have been living in

abject poverty. Finland, Poland, former Yugoslavia, Mexico, Bolivia, Japan, Taiwan, South Korea and India (West Bengal and Kerala) were able to improve their economic conditions with less social tensions or costs because of the land reforms they took up. Such reforms also led to more production, improved nutrition of poor households, poverty reduction, inclusion in economic development, grassroots empowerment and inclusion in democratic society, reduction in social unrest, reduced urban migration and better environment. In Nepal, attempts have been made from time to time for land reforms (see next chapter for the detail), even if these have not been complete and successful. Perhaps if these reforms had not happened, there would have been more poor people today.

There are different methods of land distribution: market-based negotiation to compulsory acquisition. Under the market-based redistribution programmes the state, or reform beneficiaries with credit support from the state, purchase land from land-title holders at a negotiated price ('willing seller, willing buyer'). The concept of 'land bank' introduced recently in Nepal belongs to this category. Compulsory acquisition models also diverge widely, but the basic concept is that the state expropriates the land from land-holders if they do not meet the criteria set by the state. The criteria as to the size of land holding or others (like leaving the land fallow or giving it to others for cultivation) differ from place to place and from time to time. State-centred models have not been successfully implemented in many places mainly because of the bureaucratic delay and conflict arising from coercive expropriation and low price offer to land-title holders. The nexus between politicians, bureaucrats and landowners also makes it difficult to implement these programmes. Generally, these people have larger land holdings and if land reform programmes are implemented successfully, they would have to give up some of their land. Therefore, in various countries land reform has not been implemented successfully. But, on the other hand, the call for land reform also comes from these politicians. In most cases these calls are meant to appease their vote bank: landless and marginal farmers, who form the majority. This is also evident in the land reform initiated by the (late) King Mahendra through Land Act 1964, in which there were some good provisions (discussed below), but this was not implemented properly. At that time, the government had acquired only 44 thousand Bigha⁵ of land (22,000 in Bardia and 22,000 in other parts of the country). In fact, at that time, a lot more land could have been acquired, but it was just brought to create an illusion among the people (Badal, 2006: 46). At that time, King Mahendra had to act populist in order to legitimize his rule, but in essence, he wanted to help the ruling elites, especially those supporting his take over. The beneficiaries mainly included the former military personnel. As King Mahendra had to win support from the military for sustaining his rule, he had to appease and favor them. In a way, this has been the practice in Nepal in the last 235 years since the unification of the country

in 1769. Even at present, Nepali politicians control more land. According to a study, the present Members of Parliament (MPs) of the House of Representatives have, on average, 15 ha land in the hills or 10 ha in the Terai. Political commentator Hari Roka narrated to me a conversation between the rival MPs that he had apparently overheard: An influential opposition MP from CPN (UML), who owned 10 Bigha of land in Biratnagar, thanked MPs from the ruling Nepali Congress when they forced Prime Minister Deuba in 2002 for 10 Bigha as upper ceiling of land holding by a household. The Deuba government had announced land reforms in Parliament to counter the populist programmes of CPN (Maoist), which had been attracting poor and marginal farmers by promising redistribution of resources – apparently, land – in the country. Deuba government's policy was never implemented, and even the Supreme Court ruled against it stating that 'there already is a right to property' in the 1990 Constitution. After King Mahendra took power by dissolving the democratically elected government in 1960, which had begun to implement effective land reforms, the King had to continue with the programme not to anger the population. On the other hand, his main intention was to protect the landlords and ruling elites, who controlled the army and the bureaucracy. Wolf Ledjensky, an American advisor responsible for developing land reform programmes in Nepal, was unhappy about the change in the policies that he had helped draft only two years ago in 1960⁶. The new change, he wrote to the King, was in favor of the landlords and would only help legitimize the status-quo in land ownership. His main argument was that Nepal would have to increase the land productivity to be able to develop economically and to improve the living standards of the poor and marginal people. For this, a radical land reform was necessary so as to ensure that those who cultivated the land had enough incentives to invest in land. Landlords in Nepal, he argued, had no commitment to increase production and invest in land. He wrote:

- Landlords are at present against the immediate and necessary needs of the tenants.
- Landlords are happy with the low productivity of the land.
- Their general behavior is to discard the national interest and economic development of the country.

The writings of Mahesh Chandra Regmi (1971, 1978) are in line with what Wolf had observed during that time. As Regmi's writings argue, Nepal's land policies have never been conducive for agricultural production through out the country's history. Large tracts or parts of land have remained under Birta and Jagir – the main forms of land grants at that time.. This land could be confiscated by the state. Therefore, the landlords were not in favor of investing in the lands that they held simply because they were not sure of the ownership. At that time, the main interests of the government had been to extort from the tenants as far and as much as possible.

The tenants had to pay up to three quarters of the production and bear such other obligations as providing free labour and other valuable food items from time to time (see Adhikari, 1996). The 1962 Commission on Land Reform proposed two broad changes in favour of the tenants –land ceiling and making the surplus land available for the tenants, and increasing the tenants' share of produce to two-thirds leaving only the fourth quarter for the landlords. On the other hand, the change made later on (to which Wolf was not happy) was that the share of the landlords and tenants was made equal. The argument given by those who changed the policy was that by reducing the share of landlords, the landlords would become doubly disadvantaged – they had to bear the brunt of land ceiling and their share of production would also decline. In a way, this would reduce the revenue to be obtained for the country. To this, Wolf gave an argument that land distribution programmes generally achieve less when it is implemented because landowners would transfer the land to their family members, thus changing the ownership titles.

As land reform measures under the Land Act 1964 were not effective, it did not give enough incentives to tenants to increase the production and productivity. On the other hand, the rent-seeking, luxurious and non-industrious landlords had no role in increasing the production. It is no surprise that land productivity has remained stagnant in Nepal, including the Terai, also known as the country's bread basket. Nepal used to have highest yield of paddy in South Asia in the 1960s. In the later decades, while paddy production remained stagnant in Nepal, it increased significantly in other countries (APROSC and JMA, 1995). Now paddy yield in Nepal is the lowest in South Asia. Lack of incentives in agricultural production is one of the reasons for this. Even though there are several local and international factors causing decline in incentives, lack of proper land reform and lack of access to land for the many real cultivators are the main reasons. The Terai land was productive until the mid-1960s because it was only recently reclaimed from the forest and there was a huge amount of humus or organic matter contributing to increase in productivity. A large tract of the dense forest, locally known as the Char Kose Jhadi, was also helpful in maintaining the soil productivity. As the quality and coverage of this forest declined, the natural recharging of organic matter in farmland in Tarai also declined leading to less productivity and increase incidence of pest, diseases and natural hazards like flooding and river cutting.

The other approach of land reform is market-based approach, of which there are various forms. One of them is called 'land bank' concept. This approach was promoted in the last decade, and its basic features are: voluntary participation by landlords and 100 percent cash payments at market values, a demand-driven approach with self-selected beneficiaries. Other market-based approaches have also been developed to make land accessible to poor farmers. Land transactions through sales and share

tenancies, loans or gifts have long served as a mechanism for providing access to land in the rural areas. For example, sharecropping is a predominant form of land rental in many developing countries, including Nepal. This tenancy system has been criticized because it is not conducive for increasing production. There are also fixed rental contracts. But there is also a growing resistance to this method from the civil society and land right activists. Land Bank concept, which is also promoted in Nepal, is one of the forms of market-based approach. In this approach, the state provides low interest loans to the landless or marginal farmers to purchase land from willing landowners. Social activists in Nepal have criticized this approach saying that it only benefits the landlords, who can dispose off the land seized by Maoists at the current market price. On the other hand, it is argued that if tenants or small farmers buy land on credit, they will never be able to pay back the loan because there is not much profit in farming and there is no market for their produce. The cheap import of food and farm products from outside the country, mainly from India, does seem to demotivate farmers against increasing the production. Therefore, it is argued that this approach will never be appropriate for Nepal.

Whatever may be the condition or the mechanism of land redistribution, it essentially has to secure land rights or 'land tenure' to farmers. Land tenure security refers to the degree of confidence that none will be arbitrarily deprived of their land rights or economic benefits. It includes both objective elements (clarity, duration and rights enforceability) and subjective elements (landholders' perception of the security of their rights) (Place et al. 1994; Schlager & Ostrom 1992). Land tenure security is a key part of sustainable development, as agro-business and smallholders alike need secure tenure in order to invest in the land. But there are different rules and customary practices providing overlapping claims. The situation of legal pluralism creates confusion, but also provides some local opportunities to have rights to land. Access for the poor to courts and other dispute settlement institutions is essential for securing their land rights, both within communities and between local communities and outsiders.

Land rights to women, indigenous groups and pastoralists or mobile herders are other pertinent issues. The situation regarding these issues in Nepal will be discussed in the following chapters, but it is clearly seen that there are discriminations. At present only 10% women own some land, and they own, on average, less than 0.1 ha, which is considerably lower than the average land holding of about 1 ha/man. Women constitute a large portion of the economically active population engaged in agriculture, both as farmers and as farm workers, and play a crucial role in ensuring household food security, despite enjoying very limited rights to land (Agarwal, 1994). Women's role in agricultural production has increased in the recent times in Nepal owing to various factors – growing tendency among males in working in urban areas or in

foreign countries, conflict displacing more men from the villages, and the customary practice that external affairs belongs to men. In the Nepalese villages, there is growing feminization of agriculture. Agriculture is virtually in the hands of women. There has been some improvement in legal regime related to women's access to land, but the practice has remained discriminatory.

Nepal has about 37% indigenous peoples. Many of these minority ethnic groups have little arable lands. Because they are historically settled in marginal and vulnerable areas, their access to good and productive land is rather limited. Moreover, they are concentrated in areas where biodiversity has been high, which are thus considered as 'protected areas.' The international laws are more protective of the indigenous peoples' land rights than the national laws. In a way, Nepal has no regulation that protects indigenous peoples' land or territories. For example, Article 1 of the ILO Indigenous and Tribal Peoples' Convention 1989 (Convention 169) states that the indigenous peoples are those peoples 'who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who [...] retain some or all of their own social, economic, cultural and political institutions.' Self-identification as indigenous or tribal is a 'fundamental criterion.' Thus, this Convention (169) recognizes the 'rights of ownership and possession' of the indigenous peoples, and requires states to consult them on the allocation of licenses to exploit natural resources (timber, minerals, etc) in indigenous lands.

Indigenous lands are typically held in common by relatively large communities. Therefore, titling processes centered on individual private property are wholly inadequate, and different tools to improve land tenure security, tailored to community needs, are required, including a wide range of joint and communal interests, and of public interests and rights. The Kipat system (discussed later on) was a type of community ownership of land maintained by indigenous communities, especially by Limbus and Rais in east Nepal. It had not only provided right to local resources to a community, but also helped in maintaining community self-rule. After its abrogation by the state, it is argued, the communities owning such land in the past became impoverished politically, socially and economically⁷. The abrogation of this system helped outsiders, i.e., the members of other ethnic groups especially the powerful groups, to encroach upon the land owned by indigenous populations. It is also said that outsiders also used various means like money-lending and dubious legal practices to appropriate the land of these communities. For example, Caplan argues (1970) that upper caste Hindus used such means to encroach upon the land of Limbus in east Nepal.

Pastoralists and mobile groups have their own problems. They need to move their herds and have access to grazing, and water. They may not need fixed rights over

certain fixed land or territories. For example, herders of Karnali region lost their rights to graze in community forests in lowlands in winter after the forests in the mid-hills have been handed over to communities for management in the 1980s and 1990s. As a result, they reduced their herds, which in turn adversely affected their food security. Registration and fixed rights may not work properly for them. Similarly, the common property regime may also not work for them because of the clear norms and defined membership norms inherent in it. State ownership of pastoral resources has also proved ineffective because of the various management practices needed to be adopted. On the other hand, leaving it completely open would only be tantamount to the 'tragedy of the commons.'

Conflict in Nepal will also have some consequences on land rights. The present conflict, partly resulting from discriminations and lack of access to land, is bound to have severe consequences on land rights and tenure. On the other hand, forced land redistribution has also led to armed conflict in different parts of the world. For example, landlords maintain private army to protect their land/crops in parts of India and Africa. In Uttar Pradesh and Bihar states of India, the landowners keep their own army called Ranabir Sena. From time to time, the clashes between this army and landless peasants, mainly Dalits, have resulted peasants' death. In Africa, many white farmers have kept private armies. It is also known that retired British Gorkha army personnel from Nepal are also involved in such private army to protect the land and properties of white landlords. In such cases, the local administrations tend to become incapable to regulate tenure security or the land rights. Armed groups will resort to all means to enforce a system that is favorable to them.

1.3 Globalization and land reform

Globalization has had its influence all over the world. Nepal cannot be an exception. It is argued that land distribution around the world will become less relevant in the future as international economies become more integrated because of progressive reduction, and eventual elimination, of the barriers created by national borders against the flow of goods, capital, information and ideas. With globalization and opportunities arising in non-farm sectors, it may be argued that the land is no more the only basis for livelihood. Therefore, they suggest that other non-farm or non-land-based opportunities are becoming important and landless people should develop skills and capacities to tap these newly emerging opportunities. But the reality is that globalization has made land reforms more necessary than any time in the past if we are to improve the livelihood security of the poor, the socially excluded, the indigenous peoples and women.

In the context of Nepal, land is still a fundamental natural asset for the resource poor farmers, therefore it is absolutely necessary for the maintenance of their livelihoods. Land provides income, food, status, stability and security. Having land means having recognition and bargaining power in society, and this also helps guard land-owners from potential repressions and discriminations. For some marginal indigenous groups, especially those in the Terai, land ownership means an easy access to citizenship. Landlessness and poverty form a vicious cycle, which makes the landless poor and the poor landless – one making the other more vulnerable.

Until now, land has been providing a basis for other opportunities. Accordingly, there is a nexus of land ownership, education, social/political power and access to opportunities arising in other sectors. Because of this very correlation between land and access to resources and services, it is the landed families who can avail themselves other opportunities in Nepal. On the other hand, a large number of poor and marginal farmers and landless agricultural labourers do not have access to land. Land ownership has remained skewed in Nepal, as the next chapter suggests. This has also distorted the distribution of other opportunities.

1.3.1 Threats from globalization

1. Increased vulnerability of poor, marginal farmers, and agricultural labourers:

Even though globalization creates opportunities, recent studies suggest that poor households cannot avail of these benefits. Therefore, poverty continues to remain high among the agricultural wage labourers, who roughly constitute one tenth (about 9%) of all rural households in Nepal (CBS, 2006). Poverty is found to be highest in this group as 46% of this group is living under the poverty line. Even though poverty declined substantially to 31% on average (from 42 % in 1995-96), this did not change the fate of the majority of 'poor and marginal farmers.' They simply were not part of the population that moved out of the poverty level. One of the reasons for poverty reduction was increased access to non-farm income and remittances, to which the poorer groups did not have access. For example, the poorest 20% households in the Living Standard Survey II (2003-04) did not get the benefits from remittances or the higher wage rates prevalent in urban areas – the main reasons for reduction in poverty (CBS, 2006). Globalization has been able to bring some 75 billion to 125 billion rupees to the national coffers (Adhikari, 2005), but this has not reached down to the poorest groups. Farm wage labourers, who did not have access to such non-farm employment in foreign countries or in urban areas within the country, were found to have high probability of sliding into the poverty as compared to other groups. The study (NLSS II) also reported that households engaged in non-farm self-employment had higher chance of escaping from poverty, but small farmers had not taken this

opportunity (CBS, 2006). Similarly, a strong association between access to cultivated land and likelihood of escaping from poverty was revealed from the study. Therefore, access to land is important, which is determined in Nepal mainly by life cycle (i.e., inheritance). This makes the land reform even more important.

2. Possibility of corporate agriculture utilizing the state land:

Because of the globalization and policies supporting it, such as, the Agreement on Agriculture (AoA) in the WTO, agriculture is going unstoppably into the hands of big multinational companies. Even though this is not yet directly evident in Nepal, the other countries in South Asia (like India and Pakistan) have already started to experience this. These companies are able to control agriculture because of rapid development in bio-technology and information/communication technology. Because of media control and ability to invest in high technology related to seed and other input production, farming will be controlled by them (Bhandari, 2003). Developing countries like Nepal that depend on farming have been importing more food than they export. Moreover, prices of what the small farmers produce have been fluctuating and declining around the globe. For example, coffee price has gone down by 70% in the last two decades. As food and food-chain (production, processing and distribution) is controlled by big multinational companies, survival of small farmers will be threatened (see Adhikari and Ghimire, 2006).

As corporate companies enter the developing countries facilitated by the WTO and neo-liberal policies, they will grab more land from the state for commercial agriculture. The state land, which could be used for distribution, will be taken over by these companies reducing the prospect for land reform activities. They most probably lease the land, cultivate it under intensive high input agriculture and destroy the environment. They will also take more of the scarce resources like water, depriving other local farmers from these resources. These companies then change the place if the opportunity for earning declines because of destruction in environment (eg. soil) or labour unions and the like. The burden is then left on the local population.

The present globalization has also been promoting 'neo-liberal economic principles' in which market is given the free hand, promoting larger corporate world. Under this policy, trade is given the role to meet food security. Therefore, self-sufficiency of a country in terms of food production is not considered important. This concept has also been underplaying the role of land reform or the access to land. Now it is considered that food production or farming is not necessary; what is necessary is to focus on the production of commodities or development of services in which a country has a comparative advantage. This has led to liberalization and privatization of the agricultural sector. The Agricultural Perspective Plan – a 20 year plan to bring

high growth in agriculture – is a policy document initiated from this approach, but does not pay attention to land reform. But the reality is that a large section of the poorer people, whether in Nepal or other developing countries, depends on farm-employment for entitlements to food. Thus, if agricultural development does not take place, these people will have inadequate supply of food. Therefore, land reform and agricultural development is necessary, as total dependence on trade for food may lead to catastrophes at certain periods – war, political crisis, decline in production due to natural calamities and the like.

Table 1.2: Concentration in corporate power: control of top 10 companies on world's agricultural market share (in 2005).

Sector	Top 10 companies (in descending order of their economic power)	Control on market share (by top 10 companies)
Animal Pharma	Pfizer, Merial, Intervet, DSM, Bayer, BASF, Fort Dodge, Elanco, Schering-Plough, Novartis	55% of the \$20,255 million world's veterinary pharmaceutical market
Bio-technology	Amgen, Monsanto, Genentech, Serono, Biogen Idec, Genzyme, Applied Biosystems, Chiron, Gilead Sciences, Medimmune	75% of the global market
Seeds	Monsanto (with Seminis), Dupont, Syngenta, Groupe Limagrain, KWS AG, Land O' Lakes, Sakata, Bayer Crop Science, Taikii, DLF-Trifolium, Delta & Pine Land	About 50% of \$21,000 million commercial seed market.
Pesticides	Bayer, Syngenta, BASF, Dow, Monsanto, Dupont, Koor, Sumitomo, Nufan, Arysta	84% of \$ 29,566 million global pesticide market
Food retail	Wal-Mart, Carrefour, Metro AG, Ahold, Tesco, Kroger, Costo, ITM Enterprises, Albertson's, Edeka Zentrale	24% of \$ 3.5 trillion global market.
Food & Beverage Processing	Nestle, Archer Daniels Midland, Altria Group, PepsiCo, Unilever, Tyson Foods, Cargill, Coca-Cola, Mars Inc, Groupe Danone	24% of estimated \$1.25 trillion global market of packaged food.

Source: etc-group, 2005. Oligopoly, Inc. 2005. Communiqué Issue # 91, November/December, 2005. page 1-10.

Nepal joined the WTO in April 2004, becoming its 147th member. The WTO AoA has become a contentious issue with regard to food security and agriculture in the developing countries, including Nepal. Nepal will also have to abide by the AoA, which limits domestic support that a member can provide to agricultural sector, except for some exceptions like 'green box subsidies' and support to low income resource poor farmers. As Nepal has not been able to use up the limit set for domestic support to agriculture – up to 10% of AGDP (Nepal offers only 1.3%) – there is an argument that this will not hinder agricultural development (see ACTIONAID and SAWTEE, 2004). The AoA impacts can be seen in terms of impacts and consequences of 'opening of

domestic market', 'market access', and 'export subsidy.' As 83% of Nepal's population is involved in subsistence farming, they do not have much marketable surplus. On the other hand, their production has been adversely affected by the access of other countries to the market of Nepal. This raises a serious question: How to protect the subsistent farmers from this competition or how to develop alternatives for them? After the removal of tariff related barriers, cheap imports of food will endanger the farmers' livelihood in the absence of meaningful alternative employment or income opportunities. One can, however, argue that Nepal can also benefit from market access to other countries. But non-tariff barriers such as quality requirements exist as serious hurdles, hampering exports to the developed countries. Nepal's subsistence nature of farming and lack of competitiveness is clearly a disadvantage in the context of the WTO. This is a most crucial factor that will hamper Nepal and her food security.

Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is another contentious issue within the WTO framework. This grossly violates the farmers' rights in the developing countries. Under TRIPS, persons or agencies developing new idea, product or technology will have the right to use it commercially, while others should pay for using it. If this is implemented, farmers and users in the developing countries will have to pay for using the technology developed in advanced countries, including seeds. This will seriously affect farmers' ability in the developing countries to use modern technology. Ironically, the modern agricultural technologies, especially seeds and other inputs, often come from the resources – local seeds or genotypes or biodiversity or knowledge – farmers in the developing countries conserved for generations. Therefore imposition of TRIPS is a gross violation of rights of farmers in developing world. The TRIPS provisions will also limit the farmers' access to modern technology and, as they are already dependent on it, this inaccessibility will displace them from farming. As the farmers will not have other opportunities for income or employment, their food security will also be threatened. But again it is also a violation of basic human rights – right to become a farmer and right to feed oneself (ACTIONAID, 2005).

The impact of TRIPS and control of modern seeds by the corporate sector have now been clearly seen in developing countries such as India. In Nepal, this has become less visible as commercial farming of the major crops has not been that extensive. In India, a recent report stated that more than 600 farmers committed suicide between June 2005 and June 2006 in the district of Vidarbha in Maharashtra because of loan and use of modern GMO cotton seeds from Monsanto company. In Maharashtra alone, 4,100 farmers had committed suicide in 2004, while government officials reported that more than 8,900 farmers had committed suicide in four states since 2001⁸. The

basic reason is that farmers were encouraged to grow GMO cotton using seed from Monsanto. When the GMO seed price from Monsanto quadrupled and other costs also shot up farmers, who had taken loan from banks and private sources to meet the expenses, fell into debt-trap when the cotton price declined in the market. This caused a wave of suicides across Maharastra and other states in India. In Nepal, use of hybrid seeds is restricted mainly to vegetable production. Of late, however, hybrid rice seeds are becoming popular in the Terai. One can see long queues of farmers willing to buy these new seeds coming from India. Similarly, they also buy many other inputs like fertilizers and pesticides. The farmers know that yield of the paddy from this seed will be high, but it does not produce seed. This essentially means that in a few years time, local seeds will be lost and farmers will become dependent on seeds import from India. Should the seeds price increase in India, which is very likely, many farmers could end their lives in Nepal, unable to cope with the price rise.

1.3.2 Opportunities from globalization

Globalization also provides opportunities for increasing access of the poor to land and other resources. For example, globalization has made it possible to develop alliances among the like-minded developing countries facing similar problems. They have been, in few cases, putting pressure on developed countries to come up with policies that benefit the developing countries. The international laws developed by these countries will have consequences at the national level also. The present focus on human rights and democratic governance, among others, has direct and positive impact on the poor people's access to resources. With the respect of these rights, the deprived people can develop 'collective action' of various types to increase their rights. The sharing of experiences of different countries on the issue of providing access to land will also be beneficial. Globalization has been facilitating this sharing process also. Moreover, with the influence of WTO, transfer of skill and knowledge is also enhanced. Therefore, there are some advantages in the globalization process. To get benefits of globalization, some niche markets and especial products that have competitive advantage are important. For example, Nepali open pollinated vegetable seeds are also exported to other countries, mainly to Bangladesh. The export of the seeds bring about 40 million Rs in a year.

Given that there are both advantages and disadvantages of the globalization process, it is necessary that countries, including Nepal, focus on getting more advantages and reducing the adverse impact of globalization.

Endnotes

1. Silver (1998) has developed three models to understand why exclusion occurs: a solidarity paradigm, a specialization paradigm, and a monopoly paradigm. De Haan (1998) considers them as heuristic devices, i.e., ways of looking at reality. They are not reality in themselves. In Social solidarity model, exclusion are considered as cultural and moral, and state is responsible for this. The specialization paradigm is based on the concept of individual-liberalism. According to this concept, there are social differentiations and economic divisions of labour. Individuals are considered free to move across these boundaries of social differentiations and economic divisions of labour. Exclusion occurs if these rights are not respected. Therefore, exclusion is discrimination. The causes of exclusion are unenforced rights and market failure. The approach is to make the individual capable to compete in the market and to respect the rights of individuals. Monopoly paradigm is based on the power relations among various power groups (or interest groups) and their hierarchies. Powerful group form a boundary and impose barriers to those who do not belong to the group. This group helps to make changes in state processes and practices (eg laws and policies) that help them to gain access to resources at the cost of others. This has been the dominant paradigm that is also used to explain why poor people, indigenous groups and women do not have access to resources including land.
2. CBS, 2003. Agricultural Census, 2001. Kathmandu: CBS/NPC.
3. UNDP, 2004. Human Development Report. Kathmandu. UNDP (pages 43, 164, 90).
4. Agrawal, B. 1994. A Field of One's Own. Cambridge: Cambridge University Press.
5. 1 Bigha = 0.7 ha
6. See his letter sent to king Mahendra in 1963, which was published in Garibi ko Bahas (Kathmandu: Martin Chautari, 2004).
7. This was stated by poet Bairangi Kaila while discussing the history of Kipat in an interaction programme organized by Nepal Institute of Development Studies, Actionaid Nepal and Community Self-Reliance Center on 21st February, 2007 in Kathmandu.
8. The Himalayan Times. July 21, 2006. 'Farmer suicides reach decade-high in India' (AFP). page 8.

Chapter

2

Land Ownership and Access in Nepal

Land has always been central to the economic and political power in Nepal, as anywhere else in the world. The unification of the country itself was basically motivated by the desire to expand the territory, thereby increasing the land-holding of the Gorkha Kingdom to augment its national wealth. Prithivi Narayan Shah the Great, who unified numerous small principalities into the Kingdom of Nepal in 1769, had a yearning for the control of the productive lands in Kathmandu valley and the Terai. He distributed land in reward – also known as Birta – to the people, especially soldiers, who, he believed, had helped him in the expansion of the Kingdom's territory. On the other hand, he allowed continuation of the community forms of tenure like Kipat and Guthi. The Rana Regime (1846-1950) took land as important asset and increased its ownership by the ruling class. Land expansion across Terai and the hills and increasing land tax was major policy of the Ranas. As a result of the Rana policy, land distribution in Nepal got completely skewed as land was not available for the majority. This would, and did create a huge gap between supply and demand. This resulted in new problems, mainly affecting the landless and marginal farmers who would depend on land for their livelihood.

At present, only about 21% of the country's total area of about 1,47,181 sq km is cultivated. About 29% of the country's area is covered with forests while another 10% falls under degraded forest and bushes. The rest of the area is under water, rocks and infrastructure and built-up areas. Considering the fact that it may not be possible to reduce the area under forests, there is limited scope to increase the land supply to meet the population's growing need for land.

2.1 Types of land tenure in Nepal

In order to understand the present land ownership or the distribution pattern, it is important to analyze how lands were owned and managed in the past. The legacy of the past feudal governance system is still reflected in the land ownership pattern. The following types of land tenure were seen in Nepal until the Rana period (1950), but there were changes after that. These changes came under growing internal political pressure coupled with external demands, drawn from knowledge and the experiences from other countries.

The pre-1950 system was that state was seen as the landlord. M.C. Regmi argues that there were mainly two types of land tenure system in Nepal, i.e., Raikar and Kipat. Raikar was the crown-land (or state's land and state was synonymous with the crown), but after 1950 Raikar land denoted individual's private property in which he/she pays the tax to the government and has a full right in terms of selling, using, inheriting, transferring, dividing and leasing. Kipat was a type of community ownership on the land, under which certain group (s) used to control it jointly, and state had no authority. The land initially could not be sold or purchased, but its use right was given to a member of that group by the chief of that group. This was a practice among certain indigenous peoples and Nepali government promised to retain it in the process of unification of the country. Regmi (1972:27) states that "individuals who cultivated land in their capacity as a member of a Kipat-owing ethnic group owed allegiance primarily to the community, not to the state". The state sold as well as provided grants and thus different forms of land tenure emerged. State could directly let out the land to tenants and enjoyed the taxes or shares of the production, or gave it some individuals on a contract basis, who further rented out to tenants. These intermediaries took a lot of profit not by working in the land. That land tenure system was developed most probably because there was surplus land. It is no more so. There is now a shortage of land.

All other lands except the Kipat were the state's property called Raikar. All other tenured forms of land were derived from Raikar (Regmi, 1976; 1978). In the past (pre-1950) the tenancy of Raikar land had two categories, i.e., the actual tenant-cultivators and the tenant owner. The later category of tenants are those who paid rent to the state, but who could sell or bequeath their Raikar land whereas the former category (the tenant cultivators) had no right to sell, sublet or otherwise alienate the land which had been allotted to them. In a way, tenant owners were the tenant of the state cultivating state's land by paying the rent. The tenant-cultivators were the

tenant's tenant with no right. The tenant owners were like manors in medieval Britain. The government gave grants of its land (i.e., Raikar land) to people in different forms. These grants were: Birta, Jagir and Guthi, Rakam, Rajya, and Sera. These are briefly described as follows:

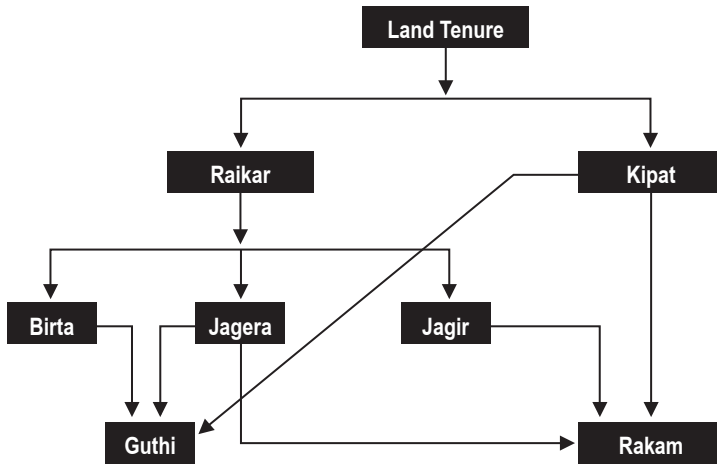


Fig.1. The pre-1950s land tenure system (source: Regmi, 1978).

The Raikar system: Under this system, the state controlled the land but allowed private use of it for agricultural production if taxes were paid. The state also sold land to individuals and this led to the emergence of the private land ownership system. Individual citizens can privately own the state land as Raikar land. As owners, they can sale or transfer the title to others. The Constitution of Nepal (1990) guaranteed the right to property including the land. The new Interim Constitution (2007) had kept a provision for 'scientific land reform'⁹. This provision makes it easier to implement land reform programmes in future. The Raikar land made up about 50% of the cultivated land until 2073 BS (1950), the year the Rana regime ended. The area under this increased as other types of land ownership were abolished by 2073 BS (1966), except for the Guthi land.

The Birta system: Under this system, the state rewards individuals with land exempt from tax. The Rana rulers and, to some extent, the Panchayat system gave an immense amount of land to the people close and loyal to the ruling class. As a result, elites of the society who served and helped advance the ruling class interests were entitled to such privileges. The state had the right to forfeit the grant. This land comprised 36% of the total land until 2016 BS (1959), when it was abolished.

Guthi system: The land donated by the state or individuals for the purpose of religious or charitable institutions. Guthi lands were exempt from tax and not to be taken back by the donors. Because of this guarantee, people wanted the land in the form of Guthi. About 2% of the cultivated land is still under this tenure.

Jagir, Rajya and Rakam systems: Before 1951, the state granted land to individuals serving in the government in lieu of their emolument. Taxes were paid and the state had the right to forfeit the grant. This was called Jagir land. The Jagir lands from which the employees obtained payment in cash was called Khuwa and the land from which the government servants received payments in kind was called Khangri. In 2009 (1952), this (khuwa as well as khangi) was converted to Raikar and the cultivators received the land in exchange of their salary entitlements. Employees also started to get salary payments in cash from the government.

Previous rulers or chieftains of microstates and localities used to work as intermediaries between the government and the people in particular areas. This was called Rajya system, under which previous rulers or chieftains still had some kind of ownership of the land in areas under their command or control. They were responsible for collecting the land revenue and paying it to the government. There were different practices in place for depositing the revenues raised in the form of land tax. For example, the collectors could use all the land revenue for their own purpose or retain most for themselves and pay part of the proceeds to the government. Least of all, they would be getting certain percentage of the land revenue submitted to the government. All of this was abolished in 2018 BS (1961).

The lands, allowed to be cultivated by the people under the condition that they provide to the government (i.e., rulers) the unpaid labour (corvee) and other gifts, were called Rakam land. This was also abolished in 2020 BS. (1963). Jagir, Rajya and Rakam systems made up about 7.7% land at the time of its abolishment.

Kipat system: It is land owned by the community, and only members of the particular community could use it through their traditional rules. Landownership under the Kipat system was limited to certain communities of Mongoloid origin, such as the Limbu, Rai, Danuwar, Sunuwar and Tamang, mostly living in the eastern and western hills of Nepal. This was abolished in 2023 (1966) BS and, at that time, about 4% land was under this system.

Jimidari system: Jamindars, or landlords, were the government functionaries at the local level for the collection of taxes including land revenue. In the Terai they were called Talukdars. They would get certain percentage of the land revenue that they raised for the government. In some cases, the government gave them some land, which they used to cultivate using the corvee labour of the people under their

jurisdiction. The land so obtained by the Jimidars in lieu for their role in the collection of land revenue was called Sir or Jirayat. The system of awarding such land was called Jamidari. This system was abolished in 2021 BS (1964).

Tenurial arrangement of resources in Nepal in the past was made in such a way that state's (which is equivalent to 'rulers' until the 1950) revenue could be maximized. Therefore, revenue appropriation directly affected the tenurial regimes. Regmi (1988: 29) writes that there were three traditional systems under which the state was able to acquire goods and utilize human resources without using money as a means of exchange. These three revenue-raising systems were also linked to the tenurial systems. These were:

1. Mineral resources belonged to the state. The state's ownership rights in such resources, unlike in agricultural lands and forests, were never transferred to individuals. Even if the mineral resources were located in individual's land in whatever tenurial regimes, state had reserved the right to exploit those resources. State, however, could use the individuals to exploit the resources but half of the proceeds had to be given to the state.
2. The government used the land and forest as a payment to its employees, which was called jagir.
3. Government, or the state, could use the people without payment for public works or other uses of the state. This was called jhara. People were also given right to use resources – land, forest, water or pasture, in lieu for providing some services for the ruling class or the public purpose. This was called rakam.

The pre-1950 Nepali state had used both the concept of both modern as well as traditional institutions to generate revenue and control the land and natural resources. For example, its main emphasis was on state's jurisdiction over all sources of revenue within its domain. On the other hand it had used the traditional institutions and practices which placed revenue and ownership rights to the jurisdiction of individuals, institutions and communities. These were called infra-state agencies of which there were mainly four types: rajya, birta, guthi and kpat. Rajya meant a vassal state which was given to a family to appropriate revenue from resources and pass a certain portion of it to the central government.

The major impact of resource tenure system in the past is seen in two forms:

1. It led to unequal distribution of resources, mainly land. As forest and farm land were distributed mainly as birta (tax-free grant) and jagir (as emoluments to government employees) to the elites, the inequality in land (forest was converted to farm land) ownership developed. The condition of common peasantry remained poor, and its legacy has been continuing as land reform program, even attempted once, was not successfully implemented. The land-dependent but landless, or

marginally landed, communities thus remained marginalized and they have not been able to move above the poverty line. In the past, they migrated elsewhere to India or Burma because of the harsh socio-economic condition within the country. The recent Living Standard Survey II (CBS and World Bank 2006) has clearly shown the fact that those landless farm workers and marginal farmers are the ones who have not been able to move above the poverty line. It is also seen that those families who are dependent totally on land and have land holding of less than 0.6 ha are highly vulnerable to food insecurity (WFP and EU, 2005).

2. There was also insecurity of land tenure (for that matter also in forest tenure). Even the tax-free birta could be confiscated by the state. As there was no security in tenure, land-owners did not take much care on development of resources or increase in production, but used common peasants under harsh terms and conditions to get whatever is possible without investment. As a result, increase in production and its eventual distribution through invisible hands was also not possible in Nepal. Accordingly common peasantry remained always poor and vulnerable. Regmi writes as of a situation in 1855:

The curse ... is the insecure nature of the ryot's (cultivators') land tenure. The cultivator, though nominally protected by regulations of all sorts, has practically no right in the soil, his rent is continually raised; he is oppressed and worried by every successive ticcadar (contractor) until is actually forced out of his holding and driven to take shelter in the Nepal Tarai (1988:114).

Nepal Tarai, at that time, was under forest and infested with malaria. This was also not hospitable for a hill farmer. However, the birta-owners who had got forest land under 'birta' from the state had started to clear the forest for selling timber and developing farm land. That was possible by bringing Indians from the neighboring districts, which later were encouraged to settle in Tarai. The community rights of the local inhabitants, especially of Tharus, were infringed without any consideration of their interest. In any case these local people were used under jhara (corvee labour) to clear the forest. Different types of birta provided by the state were of following types.

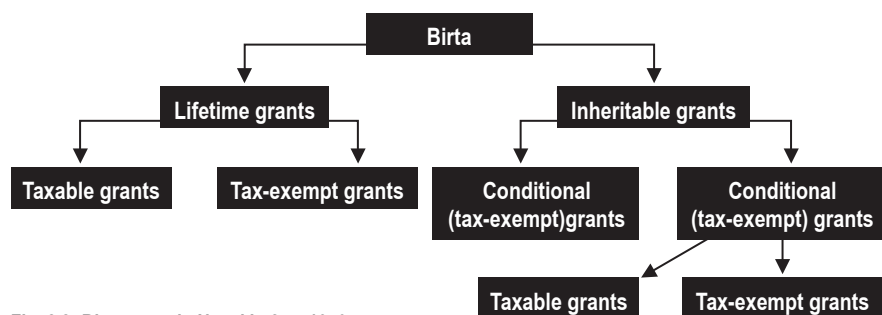


Fig. 2.2: Birta types in Nepal before 1950

Guthi system of land needs some elaboration. As defined above, it refers the land and property donated by the government or the state and individuals for the social and religious benefits. Generally, only the income derived from the property should be used. Therefore, the property will remain intact. But the Guthi Sansthan Act 1976 has some provisions to convert Guthi (Rajguthi) land to Raikar by selling it. Changes were made to this effect in 1989 and 1993 enabling even the private Guthi to sell the land and keep its sales proceeding in the bank for interest income. But a court case in January 24, 2008 gave a verdict that no Guthi can be sold or transferred in any form. Guthi land covers about 2 % of the cultivated land of the country¹⁰. As the Guthi land cannot be sold or transferred now, its continuity will be maintained.

Guthi word was derived from Sanskrit term Gosthi – meaning a society or association. The system was there before unification of Kathmandu to Nepal. Its origin and development can be traced to Newari customs in Kathmandu. For them, the system is an organic part of their social and cultural life. This term indicates an ‘organization based on caste or kinship, or occasionally on geographical proximity, which insures the continued observance of social and religious customs and ceremonies of the community. For example, there is Sanaguthi, which is composed of members of the same caste or patrilineal group, which is responsible for conducting the funeral ceremonies involving its members. These may have some property including land for generating income, and this is certainly the Guthi. In general, Guthi is a system of keeping property to finance religious and charitable institutions. Different types of Guthis are depicted in the following figure.

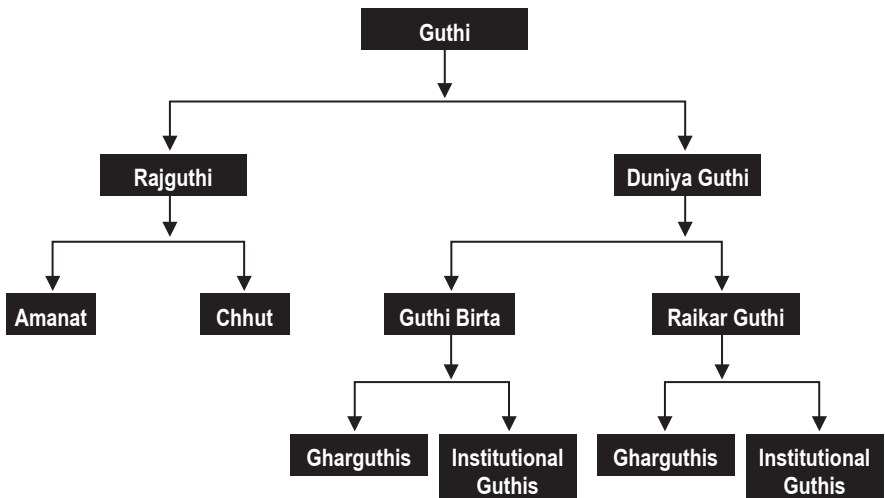


Fig. 2.3: Types of Guthi land in Nepal

Rajguthi	: endowed by members of royal family. But later on all those Guthis in which government has the control.
Duniya Guthi	: endowment kept by individuals – on Birta land
Guthi Bira	: Birta given for this Guthi purpose).
Amanat	: Guthi run by the government.
Chhut	: Guthi given to individual to run the Guthi.
Gharguthis	: Guthi within the family to maintain some rituals or temple and the like.
Institutional Guthis	: Guthis made for the public purpose.

Table 2.1. Various prominent movements related to land.

Forms of tenure	Area (ha)	% of total land
Raikar	963,500	50.0
Birta	700,000	36.3
Guthi	40,000	2.0
Kipat	77,000	4.0
Jagir, Rakam etc	146,500	7.7
Total	1927,000	100.0

Area under Guthi could go up to 4 % if another 700,000 is assumed to be operated by individuals.

Source: (Regmi, 1978)

As seen in Table 2.1, about half of the state farm land was in the form of grants of various types. Except for Kipat (which was owned by the community) and Rakam (given for use in lieu for providing some service to Ranas or to the state), other land grants were given mainly to elites. Ranas and their kin members obtained a larger part of it. Another reason for the Rana family owing more land is the land they obtained from the British Empire. The four districts in western Terai (Banke, Bardia, Kailali and Kanchanpur) were put under India after the treaty with them for peaceful ending of war in 1816. The Nepali army headed by Janga Bahadur himself helped in putting down the Sepoy Uprising against British in 1857-58. In lieu for this help, this territory was returned to Nepal, and the then king of that time (king Surendra) granted half of this territory to Rana Primeminister Janga Bahadur and another half to his six brothers. Ranas further granted lands in this area, also called naya-muluk (new country) to other elites in Kathmandu. Despite the grants, these elites did not go there for the fear of malaria. It is only after the eradication of malaria, the elites as well as other hill

migrants entered Terai. Government also established Nepal Resettlement Company in 1963 for the distribution of land to landless people. It is again during this time that a large number of Indian settlers entered Nepal for reclaiming the land and cultivating it on rental basis. The Indians were even encouraged for this. But the local indigenous population like Tharus, who are supposed to be here for more than 600 years, were slowly marginalized and deprived. At their cost, a class of feudal landlords developed (Ghimire 1992, Seddon 1984 and Karki 2002). This feudal landlord class composed of not only Shahs, Ranas and Thakuris (ruling class and primary beneficiaries of the land grants), but also the Brahmins, Chhetris and Newars, as they also obtained the land grants. The ethnic minorities, marginalized indigenous populations and Dalits were not included in these grants. As a result, they remained marginal land owners or landless. Karki (2002: 208) categorizes these landless people into four categories: victims of natural disasters, internal migrants displaced by socio-economic causes; migrants from India, and, some of the indigenous peoples of Terai and caste discriminated minorities (such as Tharus, Mushahars, Satars). These people were also attached with the landlords in various bonded and semi-bonded relationships. These people worked as Kamaiya, Haruwa and Charuwa for the landlords in this bonded or semi-bonded relationship.

Almost one third of agricultural and forestland of the nation was granted to private individuals by 1950 and the remaining belongs to Rana themselves (Regmi, 1978). Local functionaries, all favourites of Rana, implemented the land-grant policy in the village and were able to assure most benefit for themselves. They obtained a great deal of land from the state through Jagir and Birta grants and rented these lands to peasant farmers under tenancy arrangements. In this way local functionaries turned into landlords. Peasant farmers had to pay half of their crop yield as rent to the local landlords (Upreti, 2004c). Gradually, to ensure their rent, landlords introduced the kut (contract) system where only those tenants who were able to pay high rents could get a contract. Irrespective of the performance of their crops, even if the crops failed, farmers had to pay rent as Kut. Eventually these peasant farmers effectively turned into slave labourers of the Jagir and Birta holders (Regmi, 1978). The over exploitation of the peasants, i.e., the real cultivators of land, high indebtedness among them leading to confiscation of their properties, massive extent of corvee labour system in which they did not get paid, and extra services to be provided to the landlords or revenue functionaries of the area caused a mass exodus of these people to India, Sikkim, Darjeeling and the like. Here, they were involved in land reclamation, tea estates and infrastructure building. Initially they were encouraged to settle there to expand the local agriculture and bring more land under cultivation. But later on they faced several problems there also.

At present predominant form of land tenure is Raikar, followed by the Guthi. Birta, Jagir and other forms of land tenure were abolished and were converted to Raikar in different periods of time, as mentioned earlier. Until 1950s, just about one third of the agricultural and forest lands were granted to individuals and the remaining belonged to the Rana themselves (Regmi, 1978). Local functionaries, all favorites of the Ranas, implemented the land-grant policy in the villages, retaining most benefits for themselves. They obtained great deal of land from the state through Jagir and Birta grants and rented these lands to peasant farmers under tenancy arrangements. In this way, the local functionaries turned into landlords. Peasant farmers had to pay half of their crop yield as rent to the local landlords (Upreti, 2004) or the kut (fixed rent, which was higher than half the share).

After the downfall of Ranas, some attempts were made to modernize the land administration in Nepal. This meant redistributing the land obtained from the elites and guaranteeing tenants' land tenure. An attempt was made to this effect through the draft Land Reform Act (1955), which emphasized giving land ownership to the tillers. This draft Act was converted into Land Act (1964), which abolished intermediary relations in the land such as the Jimidari system, the Rajya Rajauta¹¹ system and Birta, Jagir and Rakam systems. The Kipat system was abolished and the Guthi system reformed.

During the Panchayat Period (1960 to 1990), some lip-service attempts were made for social reforms, including land reform. This was done to increase the public support for the Panchayat system. The Land Act (1964) did not mean much to the common citizenry even when it was implemented. The Act merely existed as a show piece plan. It made an attempt to remove absentee landlordism and intermediary relation from the land, and to empower the tenants through registration and legal protection. Land reclamation and resettlement in the Terai was also emphasized in this period. This was more of political nature than distributing land to the tillers. But it encouraged the hills people to move down to the lower plains for settlement across the Terai.

Even after the reinstatement of democratic political system in 1990, not much progress was made in land reform. As this period was also characterized by liberalization and privatization, the government of the day did not pay much attention or priority to the need for land reform. These policies were also partly influenced by the donors. Despite this, land has remained the central focus for the people for security, and food production. It is because of this focus that there are many disputes related to land in Nepal. For example, more than 60 percent of the cases filed in the courts of the country are land related disputes. These disputes have resulted in loss of productivity, land fragmentation and social conflicts.

As the access to land has been determined by historical pattern of land distribution in which mainly the powerful groups gained access to land, importance of land reform was realized after the downfall of Rana regime in 1950. Ghimire (1992) describes the

political economy of landlessness and land reform in Nepal in detail. He argues that good intention of land reforms initiated by democratic government formed through election in 1960 was thwarted as the government was removed by an alliance made by landlords, army and the monarch. Land reform carried out after enactment of Land Reform Act 1964 could only appropriate about 1.5 % of the surplus land that could have been appropriated if the implementation was done properly. This all land was again distributed to poorer families, but in the name of male. The changes in this Land Reform Act (until now there are five changes) did not bring any perceptible changes in land reform. Moreover, one of the reasons for less effectiveness of Land Reform Act 2064 was that it kept the high ceilings of land ownership, favouring the landed people.

Today, land-based movements and struggles from civil society have increased the pressure on governments and the international community in dealing with land ownership issues. Through out the history of Nepal, especially after 1950, there were movements for proper land reform. But these were not mostly successful.

2.2 Struggles for land rights

Struggle or resistance for land rights has a long history in Nepal, even though it has not been able to bring changes in land distribution pattern. For example in the late 18th century, Limbus struggled against the government's policy of restrictions on Kipat inheritance rights. Under the pressure from the government, they then left the country. There is also evidence that the tax contractors (ljardars) in the past exploited the people by charging high taxes in east Nepal. The system was then changed to Amanat (government collecting the taxes) or ljardars were asked to charge only the government fixed taxes from the people (Karki 2002:209). The struggle for land rights started after 1950 because of liberal political environment. The prominent party of that time Nepali Congress had a slogan of 'land to the tillers'. But tenants were organized. They started to confiscate the land of the landlords. Government controlled this by employing the army and police. Nepal Peasant Association was formed as early as 1952. The early 1950s struggle was confined in Kathmandu, where peasants had difficulty in cultivating the Guthi land. They had to pay the share as 3 parts rice and 1 part cash. They wanted to make it half rice and half cash (Budatholi 1981 as quoted in Karki 2002:210). In western Nepal Bhim Datta Pant was involved in land rights movement. He was later on killed by Nepali government. He had sought to confiscate the land not cultivated by the landlords. Another type of movement took place in Rautahat in 1952-53 which was called tamsuk fatta andolan (destroying the bondage papers). The poor peasants confiscated the deed papers charging high taxes on the loan and the mortgage. They destroyed these papers. This movement was also cracked down. Similar struggle was also organized in Bara district during that

time. This struggle was not only for land rights but also for the dignity of peasants. As a result they also opposed the derogatory language used against them by the landlords. This was also replicated in Pyuthan in 1954.

After the military coup of democratically elected government by King Mahendra in 1961, 'the All Nepal Peasant Association' was banned. It was instrumental in earlier period for organizing the landless and marginal farmers. Despite the restriction, there were protests in Dang and Deukhuri against the landlord's charging of high shares (50 % and in some cases 75 %) of the produce. There was another struggle in Nawalparasi by the tenants to demand land rights. Nine persons were reportedly killed in this struggle (Seddon 1984: 148).

Jodha, Piskar, Chintang and Barra movements or andolans were prominent during the Panchayat political system (1961-1990), which was guided by the monarchy. In 1970-71, landless peasants had occupied the forestland in Morang district and other surrounding districts, and they were killed by the army for encroaching upon the forest. The killings raised a protest by landless people (sukumbasis). Government then introduced a new Act called Jhora Land Act 2028 (1971). **It was enacted to give landrights to landless families.** Piskar movement took place in Sindhupalchok district's Piskar village. The poor peasants which were mostly the Thami people (indigenous peoples) started to snatch the rice of the landlords in 1978. The landlords brought police and killed two people. Others suffered as they fled the village. In 1979, poor people of Chintang, especially the old women, broke in the grain-stores of landlords in the face of hunger. To feed the family they had done so. Police forcefully suppressed the movement. In 1974, campaign to seize the property of landlords started in Barre village of Arghakhanchi district. Similar movement started in Jugedi in Chitawan district in 1977. Both these movements were not successful as police suppressed them. Central Terai is also the area which is known for high poverty and landlessness. The existence of landlords is high here. This was so even in the past. In Janakpur zone, a movement of 'Bhakariphor' (break in the granary) was launched in 1978, but this was also suppressed.

The democratic political system restored in 1990 gave space to various struggles to protect the rights of people, including land rights. But the government policy was guided by neo-liberal economic policies which gave emphasis to market driven reforms. But this political change had increased the expectations of the poor and landless people. In 1995 a commission (Sukumbasi Samasya Samadhan Aayog) was formed to look into landless (Sukumbasi) people's problems. This commission received applications from 263,738 families demanding land as they were Sukumbasis (squatters). Out of this, 54170 were considered as genuine Sukumbasis. The commission provided temporary land entitlement paper to 10,278 families and land

ownership paper to 1278 families (Karki, 2002:213). Karki (2002) further writes that landless people who received land did not feel secure of their ownership, especially when there is change in the government. During this period smaller protests for land rights occurred in Bardia (Bagdari and Kanara movements of Tharus), Banke (Pitmari movement) and Udaypur districts, but the government suppressed them. Kamaiya movement happened from 1997 to 2000. It helped greatly to free the Kamaiyas, but the problem has not been solved completely. Kamaiya, or the bonded labour system, originate from debt relation, and people not able to pay become bonded labourer of the landlords/moneylenders. The decade 1990 also saw the actions from civil societies. These civil societies were primarily engaged to benefit the tenants by maximization of positive provisions in the existing regulatory set up. Of these the prominent one is Community Self-Reliance Center (CSRC), which has been instrumental in providing some rights to tenants in Sindhupalchok and Kavrepalchok districts. It has also helped to form in 2004 the National Land Rights Forum (NLRF) of the rightsholders of the land, landless farm workers, tenants and bonded and semi-bonded labourers. This forum has organization in 42 districts and 48,133 members. With the political change in recent times, the expectation of landless groups has increased, but there are no specific programs as of now. The land related agendas of the main political parties of Nepal have been discussed later on. It seems that they have renewed their interest in this area.

Table 2.2 Various peasants' movements in Nepal

1948-1953	Peasant movement organized by Bhim Datta in far west Nepal.
1952	Movement of peasants, tillers and cattle herders in Bardia, 9 were killed and 27 injured by police; Procession with slogans in Birgunj, 5 killed and 125 injured; Movement demanding tenancy rights in Bhojpur
1956	Movement of burning fake bond papers in Tanahu
1953	Peasants' movement of Rautahat and the murder of Asarfi Saha
1958	Peasants' movement of Saptari and the murder of Aghori Yadav
1955/56	Peasants' movement of Siraha and the murder of Bahadur Saha
1965	Movement of Parasi in Nawalparasi, and Ajarar in Rupandehi
1979	Peasant movement in Dang at the district level under the leadership of Netralal Paudyal.
1967-69	Jhora Movement of Mechi-Koshi
1975	Peasant Movement of Tilmal, Chukha, Malpi and Taukhal of Kavre: Anti-interest movement of Myagdi
1976	Chitwan Jugeedi Peasant Movement
1978	Movement of Sindhupalchowk

Source: Collected from various papers given at GFONT Web-site - accessed March 10, 2007.

2.3 Land availability and distribution

The nature and type of land availability in different economic belts are different and they support different farming systems. Of the total area of the country (147,181 sq km), only about 21% is cultivable. Of the agricultural land (24,98,000 ha in 2001), 6.8%, 40.4% and 52.9%, respectively, is located in the mountainous, hilly and the Terai regions. Of the 23.1 million people of Nepal, 7.3%, 44.3% and 48.4%, respectively, live in these ecological belts. An average land holding size is 0.96 ha, and 32.1% of households are landless (CBS, 2002: 45). Out of the total land holdings, 1.4% landowners own 14% of arable land (Table 2.3). Of the total cultivable land, about 9% is under tenancy system (CSRC, 2005).

A brief picture of land distribution situation in the past 40 years has been presented in Table 2.3. It shows total holdings of land (which is like households having land). It is again divided into holdings with land and holding without land. Holding without land represent households having extremely small size of land, which is sufficient just for residential purpose. If they can be considered as landless, the agricultural census data should not show the people or households without land at all. As a result, it is difficult to compute landless population from such data. From the Table, one can find the following conclusion:

1. Table shows that number of holdings has been increasing. It more than doubled in the last 40 years. This is consistent with the increase in population, which doubles in every 27 years. Therefore, increase in holdings is largely related to population growth rate.
2. In terms of area under the holdings, it seems to have **increased** very marginally in the last two decades, but it increased significantly in the 1970-1980 period. This period coincides with rapid resettlement program in Terai and inner Terai.
3. Because of rapid increase in land holdings and very marginal increase in area under land holdings (1 and 2 above), the average land holding has been consistently declining.
4. Land fragmentation is another problem in the country. But in the past two **decades**, the number of parcels in a holding (i.e., a household's pieces of land) has declined. This is basically because of the division of land among the inheritors. As there is no expansion in land, the same land parcels are divided. Accordingly, its number per holding has reduced. But the size of a parcel of land holding is very small – 0.24 ha, which is about 2500 sq meter. Such a small size of a parcel is also not conducive for the use of modern inputs, especially in building the infrastructure like irrigation facilities.

Table 2.3: Availability of land in Nepal in the last 40 years (1961-2000)

Category	Census year				
	1961/62	1971/72	1981/82	1991/92	2001/2002
Total holdings (000)	1540	1721.2	2194	2736.1	3,364.10
% Increase		11.77	27.47	24.71	22.95
Holdings with land	1518	1707.3	2185.7	2703.9	3337.4
% Increase/decrease		12.5	28	23.7	23.4
Holdings with no land	22	13.9	8.2	32.1	26.7
% Increase/decrease		-36.8	-41	291.5	-16.8
Holdings with land					
Area of holdings (000 ha)	1685.4	1654	2463.7	2597.4	2654
% Increase/decrease		-1.86	48.95	5.43	2.18
Average holding size	1.11	0.97	1.13	0.96	0.8
% Increase/decrease		-12.61	16.49	-15.04	-17.16
Number of Parcels (000)	10318.2	12282.5	9516.4	10806.2	10,987.40
% Increase/decrease		19.04	-22.52	13.55	1.68
Average parcel/holding	6.8	7.2	4.4	4	3.3
% Increase/decrease		5.88	-38.89	-9.09	-17.5
Average parcel size (ha)	0.16	0.13	0.26	0.24	0.24
% Increase/decrease		-18.75	100	-7.69	0

Source: CBS, 2006.

Fig 2.4 Shows that land available in the country has increased very marginally in the last two decades since 1980s, but there was rapid increase in 1971 to 1981 period, mainly due to resettlement programs of the government. In the 1970s, government had started major resettlement programs in districts like Bardia, Japha, Kanchanpur, and Banke. Government had formed a 'resettlement department' at the central level and zonal level 'resettlement committees' at the local level. In this period, government also distributed land to Nepali immigrants returning from the then Burma and north east India. Since then also some land has been distributed in the name of squatter settlement program. On the other hand, total holdings have increased rapidly because of divisions of the property and separation of the families. As a result, the average land holding has declined (Fig. 2.5).

Fig 2.4. Total land holdings and area under land holdings, 1961-2001.

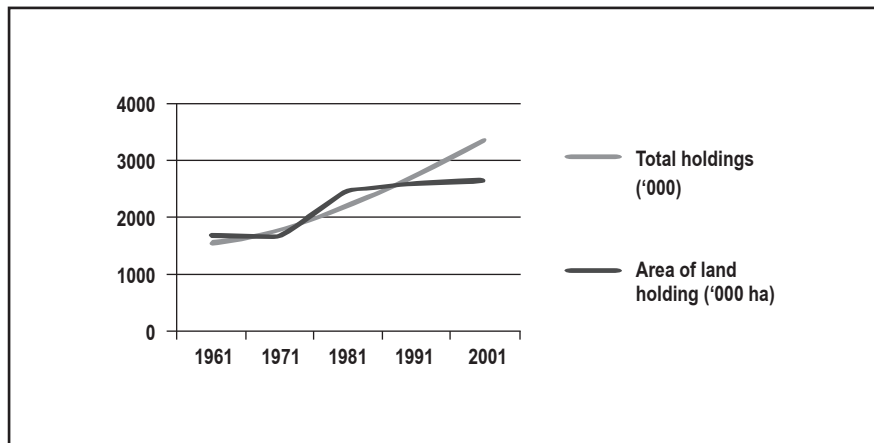
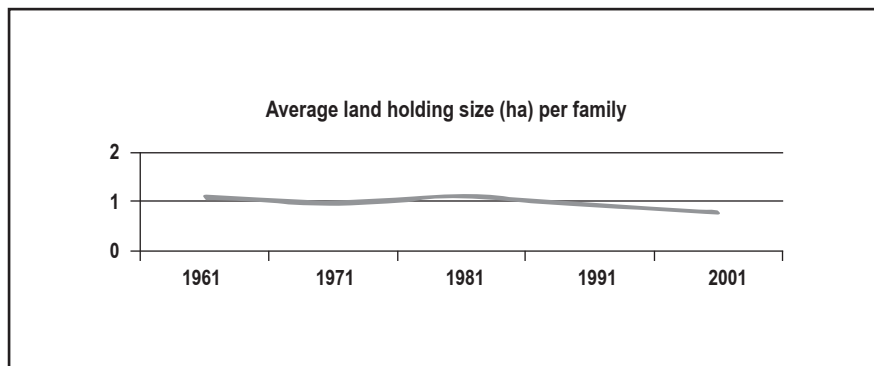


Fig. 2.5: Average land holding size (ha) per family.



Distribution of land in the country is shown in Table 2.4. It shows the area of land available in different land categories and households in those categories. This data can also be used for the calculation of concentration ratio (Gini coefficient). This ratio is shown for various years in the Table. This Table is useful for examining how the land is distributed across various groups in society and how much land would be available for distribution under certain ceiling level. The data shows that land concentration has reduced significantly by 2001 so much so that there is only 10.7 % of the land above 4 ha and it is controlled by 0.7 % households. In 1961, 34.1 % of the land was in this category and 2.7 % households had owned it.

Table 2.4: %age distribution of number and area of land holdings by size of holding 1961-2001

Land holding categories	1961		1971		1981		1991		2001	
	Holdings	Area	Holdings	Area	Holdings	Area	Holdings	Area	Holdings	Area
< 0.1 ha							6.4	0.4	7.8	0.5
0.1 to 0.2 ha	56.2	11.9	62.7	13.8	50.3	6.6	9.8	1.5	10.4	1.9
0.2 to 0.5 ha							27	9.4	39.1	12.3
0.5 to 1 ha	18.8	12.2	14.9	12.1	16.3	10.8	26.3	19.2	27.4	24.2
1 to 2 ha	11.9	15.4	11.1	17.4	17.3	19.9	19.6	27.6	17.6	29.8
2 to 3 ha	5.2	11.7	5	13.4	7.2	15.4	6.2	15.4	4.7	14
3 to 4 ha	2.7	8.6	2.3	8.6	3.5	10.8	2.2	7.8	1.5	6.6
4 to 5 ha	1.5	6.2	1.2	5.7	1.9	7.7	1.1	4.8	0.6	3.4
5 to 10 ha	2.6	16.4	2.1	15.5	2.7	15.8	1.2	8.1	0.6	5.3
> 10 ha	1	17.7	0.7	13.7	0.7	13.1	0.3	5.8	0.1	2
Total	100	100	100	100	100	100	100	100	100	100
Concentration index		0.64		0.63		0.65		0.52		0.49

Source: CBS, 2006.

Within a decade of 1991/92 and 2001/02, there has been some perceptible change in the land-holding patterns, in that land-holding has declined significantly over these 10 years. For example, in 1991/92, there were 69.4% households owning less than 1 ha land, and they occupied only 30.3%. In 2001/02, 74.75% households had land less than 1 ha, and they occupied 38.88%. A large chunk (44%) of land is in the holding (households) having 1 ha to 3 ha land. In 1991, there were 26% households having this holding, but this had declined to 23% in 2001. Another significant change is reduction in the number and size of land holdings over 5 ha. For example, in 1991, 1.5% holdings had more than 5 ha area (1.2% households had 5-10 ha and 0.3% had more than 10 ha), and they had occupied 14% area (8.2% by 5-10 ha holding and 5.8% by more than 10 ha holding). In 2001, 0.76% households had more than 5 ha (0.65% had 5-10 ha holdings and 0.11% households had more than 10 ha) and they occupied 7.31% of the land area (5.27% of area is in 5-10 ha holding and only 2.04% area in more than 10 ha holding).

Even though land holdings of the large farmers or landholders have declined, there still is inequality in land distribution. For example, 47 percent of land-owning households own only 15 percent of the total agricultural land with an average size of less than 0.5 ha, while the top 5 percent occupies more than 37%¹² of land. Inequality in land distribution as measured by Gini Coefficient was 0.544 in 2001¹³. Worst of all, 29% households do not own any land¹⁴. It goes without saying that uneven distribution of land – the only productive resource available for the rural population in Nepal – results in unequal production and unequal income distribution. Having no land of their own, the landless and land -poor are left at the mercy of big farmers and landlords, often forced to sell their labour for a negligible wage. The most affected are indigenous groups (who have special relationship with their land, particularly ancestral land) and Dalits (farm workers). About 80% of the indigenous population is marginal landowners, owning only less than 1 acre, or small cultivators (owning 1-2 acres). Most Dalits are landless. The gender dimension of land distribution is even more critical: men own 92% of the land holdings.

The data about the land distribution as **presented** above is also corroborated from Nepal Living Standard Surveys (NLSS). The survey showed that:

‘average land holdings have been decreasing rapidly, falling 25 % between 1995/96 to 2003/04; from 0.88ha to 0.66 ha. The decline has been larger in the upper tail of the distribution (for example median fell 9 %), resulting in a drop in the land Gini from 0.65 to 0.60 (if landless households are excluded as in agricultural census, it would come to 0.52 in 2003/04). Only 0.5 % of

rural households owned more than 6 ha. The share of landless households increased from 15 % to 16%' (CBS, 2006:68).

The report further says:

- The decrease in land holdings is largely concentrated among farmers in the Terai. The holdings of medium-size farmers declined from 1.16 ha to an average to 0.92 ha, while the holdings of larger farmers declined from 3.63 ha to 2.78 ha.
- The main mechanism to gain ownership of land is through inheritance as land markets are underdeveloped. In 1995-96, 85 % of rural land was obtained through inheritance. Land sales activities in rural areas are limited, with little change in this period. In both years, 50 % of transaction involved 0.1 ha or less, and only 0.1 % households bought more than 1 ha. Households that participated in the transaction tend to be richer.
- Land acquired through tenancy policy is minimum.

There are social barriers for the excluded to have access to or control over land because of the deeply rooted feudal systems shaped by customary beliefs and highly skewed power relations. For example, women and indigenous communities are cultivators to ensure household and national food security and to protect and promote biodiversity and environment. But they are usually denied the land titles. The same case applies to the Dalit communities. Even though they had been land cultivators as ploughmen and wage labourers at a time when there was plenty of land, they were denied the land ownership and control because of their castes and traditional division of labour. They continue to remain as ploughmen (Haliya in Tarai or Hali in the hills), which is considered as a semi-bonded labour. Similarly, women were denied the land title, because they have to, according to tradition and legal provisions, depend on male. However, some slight progress has been achieved in this regard in recent times.

Owing to smallholdings of farms, there is a chronic problem of food insecurity at the household level. For example, available statistics show that about 51% households possess a hectare of land and face food insufficiency. About 75% of farm households are in this category (Table 2.5). Therefore, for a majority of farm households, it is difficult to meet food security from their own production. Small farm size and low production have also been problems for the farmers to become food self-sufficient. It is interesting to note that a small, though significant, proportion of bigger farm holdings is not able to meet food self-sufficiency due mainly to unproductive use of land. On, an average, 60% land holdings were not able to meet their own food requirements from their production. This is illustrated in the following Table (Table 2.5).

Table 2.5: Food insufficient from own production (% farm holdings not able to feed themselves from their own production) in 2001.

Land holding	% farm Insufficient to feed	Insufficient to food for (% farm hh)			
		1-3 m	4-6 m	7-9 m	10-12 m
Holding without land	93.53	2.83	8.43	8.52	73.53
Holding with land	59.93	13.15	26.22	10.18	10.12
under 0.1 ha	95.38	3.32	9.79	14.00	67.88
0.1 ha and under 0.2 ha	91.66	8.53	30.97	26.76	25.14
0.2 ha and under 0.5 ha	75.98	15.34	39.25	14.97	5.85
0.5 ha and under 1 ha	51.28	17.24	26.98	5.36	1.43
1 ha and under 2 ha	32.05	13.00	16.08	2.26	0.51
2 ha and under 3 ha	17.89	7.45	8.69	1.08	0.44
3 ha and under 4 ha	14.60	6.45	6.72	0.85	0.40
4 ha and under 5 ha	10.83	5.10	4.50	0.84	0.20
5 ha and under 10 ha	10.48	4.25	4.43	1.33	0.13
10 ha and above	11.97	4.41	2.99	2.43	2.14
Total	60.23	13.07	26.08	10.17	10.63

Source: Agricultural Census Report 2001-2002.

It is clear from above data that farm size is unequally distributed, even though it has been declining, mainly because of demographic pressure. Questions may then arise as to how far this distribution is related to other features like use, renting, input application and the like. This is shown in Table 2.6. The Table reveals the following conclusions:

- Family size is larger in larger holding (7.8 in comparison to 5.2). This means, family size has also large because the land holding remained undivided. This has implications for land reform and getting surplus land above the ceiling.
- Access to formal credit is higher in larger size farms.
- Cropping intensity decreases with the size of land holding.
- Renting out practices is high among the larger holding (19.3 %), but renting out is also there in smaller holdings (8.5 %).
- Interestingly, larger farm size rent in more land than smaller farms. The economy of scale is important here, and to use the implements and time properly in the farm, larger size farms have more advantage.
- Irrigation is at higher level in larger farms (72 % v/s 50 %).
- Use of irrigation mechanism, tractor and other modern implements is higher in larger size farms.

Table 2.6: Farm size and other characteristics

Selected Characteristics	Size of holdings in hectares			
	Total	Less than 0.5 ha	0.5 - 2.0 ha	2 and over ha
All holdings (000)	3364.1	1605.6	1504.3	254.2
Average size of holdings (ha)	0.79	0.24	0.95	3.27
Average household size	5.9	5.2	6.2	7.8
Percent with agricultural credit	23.8	21.7	24.9	31
Holdings with land (000)	3337.4	1578.9	1504.3	254.2
Average size of holdings (ha)	0.8	0.25	0.95	3.27
Cropping intensity	1.83	1.94	1.85	1.73
Percent holding renting land	12.25	8.52	15.18	19.3
Percent of land rented	8.68	5.9	9	9.44
Percent irrigating	59.39	49.92	68.18	72.26
Percent holdings using:				
Iron plough	26.08	17.5	29.88	56.89
Tractor	8.18	5.98	8.54	19.65
Pump set	6.3	3.11	6.83	23.04

Source: Agricultural Census Report 2001-2002.

2.4 Women's access to land

Within the country, women's customary land rights vary considerably from place to place because of cultural variations. Substantial differences exist between patrilineal and matrilineal societies, with women generally having stronger land rights under the latter. However, growing adaptation of the dominant groups is also affecting the matrilineal societies that are generally in minority. In most cases, women have secondary, derived rights on land, obtained through their relationship with male family members (husbands, fathers, brothers or sons).

In recent years, there has been a growing pressure to increase women's rights to land. This pressure comes mainly from women activists. In Nepal also, the property or inheritance law has undergone major changes. Till just a few years ago, family property would be transferred equally among sons/male members while daughters would be entitled to an equal share only if they remained unmarried till the age of 35. A Supreme Court verdict a few years ago recognized that unmarried daughters also have an equal right to parental property, but their rights to parental property cease when married. Daughters receiving parental property before marriage are required to return the inheritance once they are

married. A recent (in 2006) Supreme Court verdict also states that daughters have the right not to return the property, including land. This particular ruling of the Supreme Court has no effect on daughters because they are married long before there is division of land and property. Once married, daughters have natural claim over their spouses' property. From the legal perspective there has been progressive change, but in practice there is no perceptible change. Therefore there is a need to bridge the gap between principles/laws and the practice. This means effective implementation of laws and policies is a must. Deep-rooted cultural practices, lack of legal awareness, limited access to courts and lack of resources, which are more severe in rural areas, are obstacles to effective implementation of policies and laws related to women's property rights.

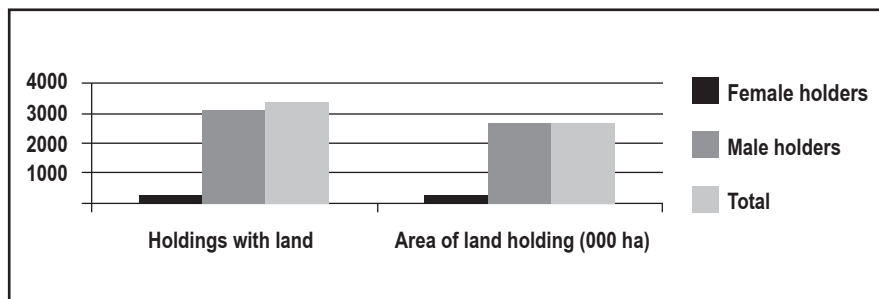
The following Table shows the ownership of land by males and females. It shows that women control only 8.07% of the land holdings in the country. It is also interesting to note that as the land holding size increases, women's share decreases constantly. This implies that the land holdings that women own are also smaller in comparison to that of the males. This becomes clear from the land area owned by women. On average, they own only 5.42% of the land area, even though they own about 8.07% of the land holdings (Table 2.7).

Table 2.7: Land ownership of male and female in 2001

Land holding	No. of holdings	% holdings owned by male	% holdings owned by female	Area (ha)	% area owned by male	% area owned by female
Holding without land	26,700	90.59	9.41	118.2	92.81	7.19
Holding with land	3,337,439	91.94	8.06	2653919	94.58	5.42
under 0.1 ha	260547	87.36.2	12.64	13241.6	87.38	12.62
0.1 ha and under 0.2 ha	346113	88.18	11.82	49864.2	88.54	11.46
0.2 ha and under 0.5 ha	972259	90.28	9.72	327060.8	90.53	9.47
0.5 ha and under 1 ha	915674	92.97	7.03	641659.3	93.14	6.86
1 ha and under 2 ha	588649	95.15	4.85	791965	95.24	4.76
2 ha and under 3 ha	157026	96.60	3.40	371223	96.61	3.39
3 ha and under 4 ha	51573	97.22	2.78	175690.5	97.23	2.77
4 ha and under 5 ha	20241	97.89	2.11	89257.5	97.78	2.22
5 ha and under 10 ha	21575	97.32	2.68	139750.2	97.08	2.92
5 ha and under 10 ha	3783	99.47	0.53	54206.7	99.61	0.39
Total	3364139	91.93	8.07	2654037	94.58	5.42

Source: Agricultural Census Report 2001

Table 2.7: Land ownership of male and female in 2001



2.5 Landlessness and landless groups in Nepal

There are 0.287 million farm families who are practically landless or have less than 0.1 ha land. This is about 8% of the farm families. There are 2.5 million farm families owning less than 1 ha land. As discussed above, about one third of the population is considered landless. Landlessness means a situation, in which a person is dependent on agriculture but has no land in his/her own name or family member's name. According to Badal Commission Report, 500,000 people were completely landless in the early 1990s. Landlessness has several implications for families: lack of citizenship and non-capacity to take part in political affairs and avail of government's services like education, health, and inability to take credit from formal institutions. As a result, the landless are forced to live in public and unsafe places and thus they become vulnerable to natural and manmade disasters. Most of the street children come from these landless families. According to CRSC, there are 1.02 million landless families. In addition, there are 450 thousands (0.45 million) Jotaha or Hali (ploughmen) families. Almost all of the Jotaha (9 out of 10) have no citizenship certificates.

Lack of viable land holding is another problem. For many households, their own food production is not sufficient. For a vast majority, the farm production can barely meet their food needs for up to 3-6 months. This is especially so in the hills and mountains. For the rest of the food, the landless are involved in a variety of occupations and activities. One of the emerging livelihood sources is foreign employment. Due to the population growth coupled with the imposition of ceiling, the per capita land holding in Nepal is as low as 0.95 ha. On average 95.31% of the farming families hold less than 3 hectares of land and only 1.2% of the families hold more than 5 hectares. Considering 3 ha as viable land holding (the upper ceiling fixed by Badal commission), around 98% of the people hold less than a viable size of land for cultivation. Such a

low distribution poses serious challenge to any meaningful investment on agriculture sector. Serious distributional imbalance of land makes the situation even worse.

According to another report (UNDP, 2004), 24.5% households are landless and 7% households semi-landless (owning less than 0.2 acres). Disadvantaged indigenous groups predominantly form the majority of landless and semi-landless (see, Table 2.7 below). For example, about 60% of Santhal, Jhangad, Kisan and Munda are landless and 5% are semi-landless. A significant proportion of the Terai Dalits (more than 50% - Chamar, Bhanc, Satar, Tatmas, Dushads, Mushars, Dhanker and Badi) are in the same category. Most of the hill Dalits (Kami, Damai, Sarki) are marginal cultivators. High caste Brahmin, Chhetri and, Newar in the hills and Brahmin, Rajput and Kayastha in the Terai have a firm hold on land. One such group of landless in western Terai is the Tharu community, better known as the Kamaiya or bonded labour until they were declared 'free' in the year 2000. Economically, these are most insecure segment of population in Nepal.

Table 2.8: Access of indigenous peoples to land

Land holding	Land-less	Semi-landless	Marginal cultivators	Small cultivators	Medium cultivators	Large cultivators	Total households
Santhal, Jhangad, Kisan, Munda	58.46	4.91	10.44	7.07	18.26	0.87	16910
Raute, Kusbodiya, Kusunda	46.12	6.12	20.41	15.51	11.43	0.41	245
Rajbansi, Gangain, Dhimal, Mache	45.78	6.12	10.89	9.09	24.73	3.39	33597
Dhanuk	34.04	7.79	25.66	14.2	10.67	7.65	32290
Sherpa, Bote, Walung	32.4	3.81	20.45	18.27	23.02	2.04	35731
Raji	31.64	15.07	28.91	14.22	9.81	0.33	15005
Gurung	26.85	6.36	30.53	21.5	14.35	0.41	110574
Tharu	22.83	6.36	17.93	15.65	34.34	2.79	235500
Danuwar, Bhujel, Pahari, Baramu, Adivasi/janajati	20.04	10.59	32.84	20.28	15.73	0.51	72715
Rai	20.04	4.89	24.97	24.24	25.04	0.76	125297
Tamang	16.69	6.93	31.29	26.73	18.03	0.32	239755

Limbu	15.83	4.57	27.06	25	26.82	0.91	67916
Magar	14.41	5.88	33.33	26.53	19.21	0.63	296313
Caste Groups							
Terai Dalits	43.98	9.89	26.19	11.3	8.3	0.34	231880
Hill Dalits	15.32	15.24	44.55	17.25	7.41	0.24	308796
Nepal	24.44	6.98	27.59	20.15	19.67	1.17	4174374

Source: UNDP, HDR, 2004: 176.

Landlessness has been attracting the attention of governments and political parties, especially after 1990. When in power, they form Landless Problems Settlement Commissions with the purpose of distributing lands to the landless. But these commissions either distribute land to their cadres or to fake landless people, who become landless to get the government land. Therefore, not much progress has been seen in this regard. The number of landless people is increasing despite distribution of land from time to time¹⁵.

2.6 Land fragmentation and consolidation

Land fragmentation has long remained as a major obstacle hampering agricultural production. It has prevented modernization efforts and intensification of agricultural production. The basic reason behind land fragmentation is division of land among the sons/male members within the family. Fragmentation has reduced the land holding size as well as production and land productivity. As all pieces of land are not equal in terms of value, each piece or most pieces of land is divided among the legitimate inheritors, including the female. Selling off and other forms of transfer are also responsible for the fragmentation of land holdings. From the 2001/2002 data, it is seen that a holding has at least 3.3 separately located parcels of land fragments. As of 2001/02, about 21.3% landholdings had 1 parcel, 45.95% holdings 2-3 parcels, 19.2% holdings 4-5 parcels, 10.1% holdings 6-9 parcels and 3% holdings more than 10 parcels of land (Table 2.9). The fragmentation of land also means a high prevalence of land cultivated by owners. Statistics suggest that around 85% of land in the country is owner-operated with only a small fraction (15%) rented. There is also a high prevalence of poverty among the small holders due to the low holding size, fragmentation and the low land productivity.

Table 2.9: Land fragmentation in Nepal in 2001

Land holding	Average parcels	% holdings having different parcels				
		1	2 to 3	4 to 5	6 to 9	10 & over
Holding without land	0.48	96.8	1.6			
Holding with land	3.29	6.4	14.1	5.9	3.1	0.9
under 0.1 ha	1.35	54.0	19.1	0.9	0.2	0.0
0.1 ha and under 0.2 ha	1.95	21.7	25.2	3.7	0.7	0.1
0.2 ha and under 0.5 ha	2.71	8.4	20.1	6.0	2.2	0.3
0.5 ha and under 1 ha	3.55	3.1	14.2	6.8	3.4	0.7
1 ha and under 2 ha	4.38	1.4	9.5	6.5	4.1	1.4
2 ha and under 3 ha	5.28	0.9	6.2	5.5	4.3	2.0
3 ha and under 4 ha	6.32	0.6	4.4	4.3	3.8	2.7
4 ha and under 5 ha	6.74	0.5	2.8	4.4	4.2	2.9
5 ha and under 10 ha	7.55	0.6	2.4	3.1	4.0	3.2
10 ha and above	6.53	0.3	5.2	3.7	3.3	2.9
Total	3.27	6.5	14.1	5.9	3.1	0.9

Source: Agricultural Census (2001) Report, CBS (2001). Kathmandu

On an average, a parcel of land comprises only 0.24 ha (see, Table 2.9 above). For the majority of owners the plot size is a clear disincentive to invest money for its improvement, including irrigation, fencing or other inputs. There are about 47% families holding less than 0.5 ha of land. On an average, the area of land ranges from 0.04 ha to 0.12 ha. About 75% farmers hold less than 1 ha of land with parcels less than 0.20 ha. When the land plots are small, it discourages farmers from making further investments to improve the land quality. There will simply be no economy of scale in such small and scattered land plots. Farmers have been cultivating the land because they have got no other opportunities to utilize their free labour. This lack of opportunity cost of labour means that there is a lot of exploitation of labour in the farming sector. As a result, young people tend to move away from the place of origin in search of potential income opportunities in off-farm sectors, such as, foreign employment and town-based services.

Table 2.10: Land fragmentation and area under in each holding and parcel of land (area in ha) in 2001.

Land holding	Holdings (households)	Total Area	Average area / holding	Total Number of parcels	Average number of parcels/ holding	Area of each parcel
Holding without land	26700	118.2	0.00	12944	0.48	0.01
Holding with land	3337439	2653919	0.80	10974468	3.29	0.24
under 0.1 ha	260547	13241.6	0.05	351429	1.35	0.04
0.1 ha and under 0.2 ha	346113	49864.2	0.14	674319	1.95	0.07
0.2 ha and under 0.5 ha	972259	327060.8	0.34	2637793	2.71	0.12
0.5 ha and under 1 ha	915674	641659.3	0.70	3250595	3.55	0.20
1 ha and under 2 ha	588649	791965	1.35	2580413	4.38	0.31
2 ha and under 3 ha	157026	371223	2.36	829787	5.28	0.45
3 ha and under 4 ha	51573	175690.5	3.41	326196	6.32	0.54
4 ha and under 5 ha	20241	89257.5	4.41	136425	6.74	0.65
5 ha and under 10 ha	21575	139750.2	6.48	162817	7.55	0.86
10 ha and above	3783	54206.7	14.33	24694	6.53	2.20
Total	3364139	2654037	0.79	10987412	3.27	0.24

Source: Agricultural Census (2001) Report, CBS (2001). Kathmandu

2.7 Tenancy rights and tenants (mohi)

The 1964 Act defines tenants as persons or families cultivating the land other than their own under certain conditions. Likewise, tenancy right means legal rights of the cultivators over the land that they cultivate. This Act underwent 4th amendment in 2053 BS (1997) and 5th amendment four years later (2001) denying tenants their legal rights. Guthi Sansthan Ain (Guthi Corporation Act), 2033 (1976) recognizes the tenants' right to land in its first amendment (1984), but the legal provisions have not

been implemented properly. As of 2051 BS (1995), there were 0.45 million tenants, who had not been given their tenancy rights. It is believed there is a large number of tenants who have not officially registered their tenancy rights with the government. If these tenants resort to legal provisions they will be entitled to one half of the land that they cultivate. Before the fourth amendment of Land Act 1964, one would need to submit receipts proving that the tenants were paying in cash or handing over kut, minimum share of production to the landlords. The amendment required tenants to submit proofs of their tenancy rights within six months. However, this new legal provision was not brought to the public attention, systematically denying tenants the opportunity to register their tenancy claims over land. Now they cannot do so as the system has been abolished. This was done so to abolish the dual/joint ownership of the land – by the landlord and the tenants.

The main issue in Nepal with regard to land reform is the tenants' rights. Neither all tenants have been registered nor have those registered got their share of land. In 2041 (1984), according to a study carried out by IDS, 31% of farm families were tenants – 10.8% registered and 22.3% non-registered (Shrestha, 2006). According to Badal Commission, there were 0.56 million tenant-farmers in 2051 (1994). There were 20% farm families as tenants. Total land area cultivated by them was about 12% of the cultivable land. At that time, the registered tenants were 370,127, of which 72% lived in the Terai, 24% in Kathmandu valley and 4% in the hills. According to 2001 census, 87% farmers cultivate their land by themselves while 12% possess some land and also act as tenants. The remaining (1%) farm families are pure tenants, depending totally on the land other than their own. Tenants cultivate only 9% of land while owners themselves cultivate 91%. According to Living Standard Survey II (2003/04), 31% farmers (about one million farm families) work as tenants. About 7% farm families just work as tenants and 7% are Talsing or land-owners (Shrestha, 2006).

Various forms of tenancy are in existence in Nepal. These include: share-cropping, renting on fixed rent basis, or local variant of these types. A large proportion of land holding and land area is owner-cultivated. About 86% of land holdings and 84% of land is solely cultivated by land owners. Only about 1% of land holdings (1% of land area) is rented out. A negligible number of land holdings and area is under other forms of tenancy. But mixed tenure system is seen in about 12% of the land holdings, which mean that the owners either rent out part of the land or give it for cultivation through other arrangements. About 16% of land area is cultivated through the mix of different tenure systems, but overwhelmingly the owner-cultivation. Rent cultivation and use of other tenure system is relatively more common in the Terai than in other ecological belts. In 1991, about 19% of land holding in the Terai was under mixed tenure system, but it was 12% in the mountains and the hills. (Table 2.11).

Table 2.11: Structure of tenancy in Nepal 2001.

Tenure types	No. of holdings	% age holdings	Area (ha)	%age of area
Owner-cultivated	2907426	86.42	2212864.2	83.38
Rented	35844	1.07	26307	0.99
Other tenure	9005	0.27	2028.3	0.08
Mixed tenure	397893	11.83	412846	15.56
Total	3364139	100.00	2654037.1	100.00

Source: Agricultural Census (2001) Report, CBS, Kathmandu.

Even though, it is seen that Nepalese agriculture is largely cultivated by land owners, there are 375,000 registered¹⁶ and 450,000 unregistered tenants in Nepal¹⁷. On the other hand, 25.4% of total cultivable land was rented in 1962 but it came down to 9.3% in 1991¹⁸. This clearly meant that absentee landlordism, or land area under tenancy, got heavily reduced over the years. Therefore, by the 1990s the removal of the so-called double ownership was not factually a major socio-economic concern. Moreover, it is seen that among the titleholders who had given the land for cultivation to others, 85.55% were small farmers having less than 3 ha of land. This makes it difficult to argue that land redistribution would increase the production and people become farmers. Due to low per capita land holding, and growing influence of non-farm income, the economic strength of the tenants and the titleholders may not be determined by the land holding only. Moreover, economic strengths of most tenants and land-title holders having less land is not significantly different. For example, in a study on food security in rural areas, Adhikari and Bohle (1999) found that ownership of land alone is not the main factor determining food security because of small land holding. This is precisely why households with access to other opportunities have better chances food security.

2.8 Fallow land

Even though the 2001 Sample Agricultural Census mentions that 10,720 ha (of the total cultivated 26,54,037 ha) land is fallow, there is a growing concern that a lot more land is lying fallow, especially those owned by absentee landlords. CRSC reports that about 20% of the cultivated land has been remaining fallow. According to their reports, 2,968,017 ha land has been cultivated and 790,983 ha has remained fallow (CSRC 2004). Check figures.

2.9 Guthi Land

It is stated above that Guthi land occupies 2% of the cultivated land in the country. About 71,153 bighas (1 ha = 1.47 bighas) and 3,891,44 ropanis (1 ha = 19.5 ropanis)

of land in the country is under the Guthi system of land. At present there are two types of Guthi land: Rajguthi (government Guthi) and Niji (Private) Guthi. Guthi kept by the king, the queen, the prime minister and their families is called Raj Guthi. The Guthi land kept by people but registered with the government is also called Raj Guthi. Therefore, the Raj Guthi remains under the jurisdiction of the government. There are two types of Raj Guthi: Amanat and Chut. Under the former system, the income of the Guthi land is deposited in the government's land revenue office, and the cost of the stipulated religious works would be born by that office. Under the second type, the income from the Guthi could be used for the stipulated religious works, and whatever then remained was required (or not required) to be submitted to the land revenue office. The Guthi was also organized by the Guthiars (the stakeholders of the Guthis). In a way, it was like Guthi exempted from the government control. According to Badal Commission, there are 1,050 Amanat Guthi and 1,150 Chut Guthi in the country. There are 145 Guthi whose nature could not be identified. Therefore, in total there are 2,345 Guthi in the country. The Niji Guthi are kept by individuals and they have their norms for the operation. These are considered as Raikar land.

The Guthi land is now managed by the Guthi Sansthan (Corporation) constituted under the Act named after it in 2021 (1964). According to this Act, this Sansthan is responsible for the management of the Guthi land and 717 temples, 647 Pati, Pauwa, Sattal, and 159 ponds. Previously, the Land Act 1964 (2021) stipulated that no tenure rights would be exercised in Guthi land. But four years later, this provision was scrapped, and tenants could claim tenancy rights on Guthi land also. In 2029 (1972) this Act went through an amendment recognizing that the tenants would be entitled to 1/3rd of the land cultivated by them, and retaining land owners claim over the rest. This was amended for the second time in 2033 BS (1976), converting the tenancy-claimed Guthi land into Raikar (for the ownership of tenants). Following this amendment tenants would have to pay 500 times the amount paid as rent (kut) in urban areas and 200 times in the rural areas. This was a barrier for the conversion of Guthi land into Raikar land of the tenants. In order to facilitate this process, the Act was revised again in 2041 (1984).

There are five types of Guthi land under the jurisdiction of Guthi Corporation:

- Guthi Raitan Numbari Jagga - person who has the land registered under his/her name has to deposit the land revenue at the Guthi Sansthan. This type of land is like Raikar land. Total land area under this type is 50,963 bigha and 54263 ropani.
- Guthi Adinastha Jagga - tenants cultivating land under this type have to pay rent/land tax to the Sansthan). The Sansthan is actual owner of the land, and the tenants are cultivators. Nepal is said to have 2065 bigha and 89,711 ropani land under this type.

- Guthi Numbari Jagga - land under the ownership of the Sansthan. Tenants cultivating such land are required to deposit the revenues/land tax to the government. This land may or may not have tenants. According to available statistics, there is 221 bigha under this land.
- Guthi Tainathi Jagga - land with complete ownership right vested in the Guthi Sansthan. There are 1910 bigha and 574 ropani under this land.
- Khang Guthi - persons working for this type of Guthi has the right to get full or a part of rent from the Guthi land if it has been cultivated by the tenant or is able to cultivate the land in lieu of the work. Such land is called Khang Guthi. There is 3090 ropani land under this type of ownership. About 15,994 bigha and 241,506 ropani land under Guthi have not been classified into any type or category (Badal Commission report; page 60-61).

2.10 Land deprived communities in Nepal

Kamaiya

Kamaiya is permanently bonded farm labour system. Kamaiya are owned by the landlord and they can be 'sold' or 'purchased.' A person becomes Kamaiya when he cannot repay the debt to the landlord. Over the time, the loanee's entire family becomes Kamaiya and serve the landlord generation after generation, as long as the 'loan is not paid.' On the other hand, the loan cannot be paid because it keeps on accumulating with compound interests. The socio-economic condition of the Kamaiya is pathetic. At least, 73.2% of the total Kamaiya had no land of their own and the majority was burdened with the loan from the landlord. Failure to pay the loan compels them to be bonded. The average loan of each member of the Kamaiya is shown as Rs. 5000¹⁹. As of 2000, there were 18,400 Kamaiya households with a population of 101,500 (Table 2.12)

Table 2.12: Kamaiya households and population

District	2052 Falgun (1996 March)		2057 Bhadra (2001 August)	
	No. of households	Population	No. of households	Population
Dang	1,856	12,275	1,166	7,727
Banke	1,060	6,846	1,345	8,381
Bardia	5,037	25,846	6,949	34,147
Kailali	5,547	30,463	5,895	34,804
Kanchanpur	1,642	7,945	3,045	16,463

Source: HMG Ministry of Land Reform & Management, Report on Release & Resettlement of Kamaiya, 2003.

The Kamaiya mainly live in five districts in the western Terai: Dang (1,166 households), Banke (1,345 households), Bardia (6,949 households), Kailali (5,895 households), and Kanchanpur (3,045 households). The government freed the Kamaiya in 2000, with the promise that the state would take care of their welfare and resettlement. Some efforts have been made to resettle the freed but these are considered insufficient to address the problem faced by 12,000 Kamaiya households that the government considered needing support. The policy of the government is to provide each Kamaiya family with 5 kattha of land, which is less than enough to produce food even for 1-2 months for relatively large Kamaiya families (8-9 members). Consequently, the Kamaiya remain dependent on the landlords – their former masters. They continue to sharecrop the land belonging to the landlords. The Government had declared that it would provide each family with Rs 10,000 and 35 cubic ft timber for building house.

In July 2006, the Kamaiya protested again taking advantage of the freedom obtained after Janaandolan II. The Government had requested them to wait until December 2006. Kamaiya again protested when nothing was done by this promised date. The Government then formed a committee to look after their grievances. As mentioned above, the government has categorized the Kamaiya into four types (see Table 2.13 for the categorization criteria), but in a way there is not much difference from one type to another. On the other hand, facilities provided by the government and nongovernmental agencies are concentrated in Type A only. Those who had built shelters out of their own savings and others with some land of their own were excluded from the state announced benefits. The second type of Kamaiya, who in essence are no different from the first type, have also been protesting against the state. In the initial stage the government declared that it would provide 10 kattha land per family. Later on, it was reduced to 5 kattha. This commitment was not implemented properly, either. The Government has given land to roughly 11 thousand families, and some have received up to five Kattha. According to the Government, of the 20,000 families, 9,000 already had some land of their own and were not eligible for the entitlement. Later, it was announced that land had been given to all 20,000 families. In practice, however, even those who have undergone the documentation process have not received land, except in papers. The Kamaiya families were given land in the office, but when they went back to the field they found out that the land was either under community forestry, or covered by river or cultivated by local elites, mostly landlords. Some 1,500 families are said to have received land only in paper, not in the field. The Government and NGO's help has not been particularly useful. For example, they have built toilets but continue to face the problem of feeding the family. While the Government argues that there is no land for distribution civil society experts and activists maintain that the state can provide the Kamaiya with the land where they have been living, somehow. Moreover, in western Nepal, there is a large tract of public land, which can be distributed to them²⁰.

Table 2.13: Household population of freed Kamaiya and their classification by the government

District	Class A	Class B	Class C	Class D	Total
Dang	175	230	371	351	1127
Banke	165	736	21	420	1342
Bardia	2691	1203	1019	2066	6979
Kailali	2647	2477	199	350	5673
Kanchanpur	2453	482	137	98	3170
Total	8131	5128	1747	3285	18291

Class A. Having no property. Class B. Having a hut in public land. Class C Having land up to 2 katha or 0.068 ha, and Class D. Having more than that.

Kamaiya movement

Number of families freed by the government: 18,291

Those families claiming to be under freed Kamaiya = 20,758

Families who got the land = 12,029

Distributed land = 2381.2 bighas

Families receiving money for house building = 8039

Money distributed = Rs 7,73,02,000

Families receiving timber for house construction = 2037

Groups made = 741

Other farm/household labourer

The other types of farm and households include permanent farm workers, daily workers and periodic and semi-attached workers, such as, Haliya, Charuwa and Kamlari. The number of permanent farm workers stood at 301.7 thousand in 1991/92, but increased to 317.8 thousand in 2001/02. This increase is the result of increase in population and growing landlessness. The increase in the number of permanent employees were observed in the small and medium size holdings. However, the number of permanent employees in the large holdings declined from 164.7 thousand in 1991/92 to 151.1 thousand in 2001/02²¹. It is remarkable to observe a big increase in the number of females hired as permanent workers. The biggest increase/decline was noted in the large holdings from a proportion of only 22.2% in 1991/92 to 44.7% in 2001/02²².

Of the 3.364 million holdings, 66.2% did not hire agricultural workers in 2001/02. In 1991/92, this percentage was less, which was 64.4%.

In 1991/92, an estimated 5.3% holdings (145 thousand holdings) employed permanent workers with 3.9% holdings hiring occasional workers while 30.0% holdings (830.2

thousand holdings) employed occasional workers. In 2001/02, only 2.7% of the total (about 92 thousand holdings) employed permanent workers, 2% of this hiring occasional workers. However, the proportion of holdings that had employed occasional workers increased to 31.1% (1.046 million holdings) in 2001/02²³. (See also Tables 2.14 and 2.15)

Table 2.14: Employment generation in farms in 2001.

Total Holdings	3364139	100.00
Holdings with permanent workers	23220	0.69
Holdings employing occasional workers	1046401	31.10
Holdings employing both types of labour	68944	2.05
Not employing labourer	2225575	66.16
Total permanent workers	178981	100.00
Male	138745	77.52
Female	40236	22.48

Source: (CBS, 2001).

Table 2.15: % holdings employing different types of labourers in 2001.

Land holding	Holdings (farm households)	Permanent workers %	Occasional workers %	Both %	Permanent workers /farm hh
Holding without land	26700	0.1	5.1	0.0	0.00
Holding with land	3337439	0.7	31.3	2.1	0.05
under 0.1 ha	260547	0.4	10.7	0.1	0.01
0.1 ha and under 0.2 ha	346113	0.6	18.6	0.2	0.01
0.2 ha and under 0.5 ha	972259	0.6	26.0	0.5	0.02
0.5 ha and under 1 ha	915674	0.6	35.3	1.0	0.03
1 ha and under 2 ha	588649	0.8	42.8	3.4	0.08
2 ha and under 3 ha	157026	1.4	50.1	8.4	0.17
3 ha and under 4 ha	51573	1.6	49.6	15.7	0.39
4 ha and under 5 ha	20241	2.3	51.1	20.5	0.49
5 ha and under 10 ha	21575	2.6	42.1	32.4	0.99
10 ha and above	3783	4.8	31.1	28.4	1.30
Total	3364139	0.7	31.1	2.0	0.05

Source: CBS, 2002

Daily-wages (Khetala)

Those working on a daily wage basis are called Khetala, especially in the hills. These farm labourers are mostly employed on an informal basis. It is more formal and highly paid in areas close to town. But in the rural areas, wages are less and there is no timing of the work. A labourer sometimes works from dawn to dusk and there usually is no fixed wage rate nor working hours. Generally, women are paid less than men even as both are engaged in the same type of work.

Periodical labours

Many households hire Hali and Gothala in the hills and Haruwa and Charuwa in the Terai to plough land and look after the cattle. In Halia system, the Hali (mainly young and strong-bodied men) are hired permanently or for a certain period (usually for a period of one year) through verbal agreement to plough the field in exchange of certain amount of money or grain. The status of the Hali is relatively better than the daily waged labourers. By its nature, the Halia system can be said to be a semi-bondage system where the Hali are free to go to their house after the end of the working day. They are bonded in the sense that they are bound to work only for the agreed landlord's field. They can not choose to go to work for other landlords or, in the least, they have to give priority to their own landlords. This system has also been continuing because of a conservative tradition prevailing in most of the hill areas of the country – that the 'higher' caste, particularly the Brahmin, should not plough the field. However, such traditions are breaking down, and more and more young Brahmin and Chhettri now plough their land. It is estimated that there are about 0.3 million Hali in Nepal, 60,000 of them only in the far west region²⁴.

Gothala on the other hand are bonded labourers who should stay put in the landlord's house permanently as domestic servants. Apart from meager feeding and clothing, the landlords do not take much responsibility for their human development – like education and health. They have to work for cattle rearing and in the farm, too.

Instead of their labour their parents, or themselves, are paid certain amount of money or grain on annual basis as wage. But because of the lack of bargaining power and impoverishment they are underpaid and exploited. It is not known exactly what is the population of Gothala now. This exists in both hills and the Terai.

Kamalari: Refers to young girls working as domestic help at the landlords.' These girls are usually in 7-8 to 16-17 years in age group. The Kamalari system is common among the Tharu, mainly in areas under the bonded labour system. Even after being

'freed' in July 2000, the poverty-stricken Kamaiya have still been sending young girls and daughters to the landlords, unable to take care of them at home. It was common in the 5 districts – Dang, Banke, Bardia, Kailali, and Kanchanpur – where bonded labour system existed. The Kamalari engage in household as well as farm work, including animal sheds cleaning, clothes and dish-washing. There have been many cases of rape of these young and innocent girls. Even families and households in Kathmandu and Pokhara nowadays prefer Kamalari to look after their house and kids. Landlords employing Kamalari pay some money to the parents in exchange of the work the young girls do for them. The mode and amount of payment can hardly be known as these are exclusively subject to mutual, verbal negotiation between the employers and the Kamalari family. However, it can safely be stated that some are paid up to Rs 4-5 thousand/year, while others end up with less than a thousand rupees/year, for sending Kamalari is a tradition as well as a compulsion. A dalal (broker) also fixes or arranges for the contract, which goes mostly in favour of the employers. Some Kamalari have worked round the year for free, without any money. On the day of Maghi most decisions on Kamalari are made – new or renew of contract or freedom. The Government considers that Kamaiya freedom is also linked with this Kamalari freedom but no one has taken any notice of this, except for a few NGOs. Asahaya Nani ki Sathi is one of them and it has freed 397 Kamalari, as of 2005.

Ukhada land and Ukhada tenants

This is like contract farming by paying fixed cash or kind payment to the landlord. The land they cultivated (or cultivate) was not registered in anyone's land, but landlords had control in it, according to Sir Jirayat. In the past landlord had land in many places and they were not able to cultivate all the land. The land would remain fallow and in this case they were not able to pay the land revenue. If land revenue is not paid, land could have been publicly auctioned. To save the land under their jurisdiction, they employed Indian and Nepali landless people to cultivate the land and charged the rent, some times more than the double of land revenue to be paid. The land revenue had then to be paid to the government. They took cash rent. Once the production started to increase, landlords wanted to take back the land. But the tenants were hesitant because they were cultivating the land for a long time. Considering this, the government brought Ukhada Related Ain in 2021 BS, according to which land would go to the tenants if he is a Nepali citizen. There was also a special court to solve this problem. But it was abolished in 2042 BS. Now there are about 5,000 Ukhadas. The regulation also says that 'naturalized' citizens will not have access to this right. This was aimed at Indians who came here for work and living. Only those who have citizenship based on birth have this right.

Endnotes

- 9 Land reform has been one of the main agendas while making a peace agreement between CPN (Moist) and the government formed by SPA (seven-party alliance) in 2006/07. There had been a great deal of negotiations between these two groups as to what should be the modalities of land reform. The Maoists proposed to confiscate the land above the ceiling without paying compensation for the land. They also wanted to keep the word 'progressive land reform' in the constitution. On the other hand, other groups favoured payment of compensation for the land (above the ceiling) taken by the state. Moreover, the groups finally agreed on the word 'scientific land reform' to be kept in the new interim constitution. However, it does not define what this 'scientific' means.
- 10 In 2000, Guthi raitan land was as follows – in the hills 312268 ropani and in Madhes 61637 Bigha. The Guhi controlled land in hills was 215043 ropani and in Madhes 220087 Bigha. Under Guthi Tainathi there was 2500 ropani in hills and 21013 Bigha in Madhes (Kantipur Daily Jan 25, 2008. P.1.)
- 11 The land under the control of former chieftains of the micro-states before the unification of the country.
- 12 Human Development Report (UNDP, Nepal), 2004: 43.
- 13 Human Development Report (UNDP, Nepal), 2004: 164.
- 14 Human Development Report, 2004 (UNDP, Nepal). p. 90.
- 15 In one estimate of the Ministry of Land Reform given to the press by its spokesman, the government has distributed land to more than 180,000 families since the restoration of democracy. See, No More Land to Land Squatters at www.kantipuronline.com accessed on Dec. 19, 2002; see also Badal Commission Report.
- 16 Badal Commission Report, P. 115.
- 17 Jagat Deuja, Concept of Land Band and Issue of Land Right, Community Reliance Center (a paper presented in inter-action program in 24 Falgun 2060 organized by Conscious Media, Community Reliance and Action Aid Nepal).
- 18
- 19 Id. p.12.
- 20 Lamichhane, Raghunath. 2006. 'Continued protests' (Abiral Andolan), Kantipur, 20 July 2006. P.6,
- 21 Id. p. 19.
- 22 Id.
- 23 Id.
- 24 CRSC (nd). Haliya. Rearding Material – 5. p.1-2.

Chapter

3

A brief review of policies and legislations related to Land Reforms

After the downfall of Rana regime, government made various attempts to correct the injustices in land distribution as discussed in the preceding section and to increase agricultural production. Several laws and policies to regulate and manage land resources were also formulated. The major ones include Land Acquisition Act 1977; Land Act 1964; Birta Abolition Act 1959; Land Revenue Act 1977; Guthi Sansthan Act 1976; Land Survey and Measurement Act 1963; Range Land Nationalization Act, 1974. Of these, the Land Act 1964 has had major impact on land distribution and management across the country, mainly in the Terai region.

Within the existing legal framework the land rights can be defined as the rights of a person to acquire, own, possess, sell and otherwise dispose off the land that the titleholder owns. The Land Act 1964 (4th amendment in 1996) has abolished dual ownership of land, effectively ending the tenancy rights. Land rights advocacy and movement in Nepal defines land rights as establishment of the rights of the actual tillers over the land. Any person who possesses, or earns livelihood out of the land is entitled to acquire the ownership title over the land. According to this view, these rights include the freedom of selling, transferring, mortgaging or inheriting the land. Advocates of these movements argue that land rights improve the access of the landless to the land, ensuring and establishing their right to cultivate and produce, selling and distributing the produce and making independent decisions over matters relating to cultivation²⁵.

3.1 Reform measures in the 1950s

After the downfall of Rana regime, the concern was to bring back to government the ownership the land unjustly distributed to elite families in the form of grants. For example, the main political party of that time - 'Nepali Congress' - had a slogan 'land for the tillers'. Shrestha (1997) lists the following measures made during this time.

- Promulgation of law in 1951 for preparing a list of tenants in Kathmandu Valley
- Appointment of land reform commission in 1952 to examine problems relating to land tenure and agricultural credit.
- Declaration of a 13 points programmes in 1955 by the then government, largely for safeguarding the interest of the peasants with emphasis on fixation of interest to 10 percent, fixation of land rents, raise joint fund of landlords and tenants, maintain records of land and tenants, land tax from Birta land, tenants' rights.
- Enactment of Land Act, 1957 granting security of tenure to the tenants and fixing the rents at 50 percent of the produce
- In 1959, the Birta (rent-free land) system was abolished and all the Birta lands were converted into Raikar land by granting ownership rights to recorded tenants on such land.
- First resettlement Programme started under Rapti Valley Development Programme in Chitwan district (Central Nepal) in 1956 with objective of relieving population pressures in neighbouring area, rehabilitating landless peasants and partially solving the food problems of Kathmandu Valley resulting from flood of 1954. However, the programme could resettle families only after the malaria eradication programme was effective in 1958.

Apart from above, another main program of that time was 'forest nationalization', which was made through Forest Nationalization Act 1957. Because of the exploitative policies of the state before 1950, a large part of forest, mainly in Terai, was given as grants to few families of the powerful groups. To bring that land back to government's ownership, this Act was enacted. But this also had some negative impact because people started to cut down the forest which they managed as their community forests. The interest of the government was to bring back the forest under government ownership from a few feudal lords.

The above programmes were not effective in bringing expected changes in society. As the elements of the past feudalistic structure were still strong in the administration and military, not much could be changed or achieved.

3.2 Reforms in the period from 1960 to 1990 (Panchayat Political Period)

The period from 1960 to 1990 largely covered a 'panchayat political system', which was imposed by the then King Mahendra as a system of guided democracy, i.e.,

guided by the monarch. A multiparty political system was instituted for a brief period of 18 months (1960-1961). However, the king dismantled this system and imposed his own political system with the help of military.

A major development in this period is the enactment of Land Related Act 1964 and its implementation. The origin or the evolution of this act, in facts, dates to the decade of 1950, and it was an impending issue in the dismantled government. It is even said that one of the reasons for the king to remove the democratically elected government was the 'land reform' program they were about to launch. The king wanted to continue the program so that it appeared populist also. But his program was much diluted, in the sense of bringing major change in land ownership pattern, than the one drafted earlier. Moreover, the king's Land Act 1964 is also said to protect more the interest of landlords than that of tenants. Despite these shortcomings, the program was implemented. Prior to this major program, experiments in land reform were made in 1963 on a very limited scale in accordance with the Agricultural Reorganization Act 1963, which concentrated mainly on providing tenancy rights to the tillers as well as credit to the farmers.

The aim of 1964 Land (Related) Act was to overhaul the land reforms policy in the country to increase agricultural production. The stated objectives of this Act and land reform program were to (a) make a more equitable distribution of cultivable land (b) make improvement in the living condition of the actual tillers by proving them with technology and resources necessary to increase production and (c) divert unproductive capital and human resources from land to other sectors of the economy.

The programme aimed at both remoulding agrarian relations and modernizing agriculture so that it can also support the industrial base of the country. It aimed at equitable distribution of land through newly imposed ceiling on land ownership and tenancy holdings. Tenancy rights were provided to peasants cultivating agricultural lands actually belonging to others at the time of the enforcement of the programme, and to all those who subsequently cultivated the main crop at least once a year. Agricultural rents were generally fixed at a maximum of 50% of the main crop. In addition, efforts were made to mobilize capital by introducing a compulsory savings scheme. At this time, the adverse impact on both economic development and democracy of a policy that favours concentrating land holdings in small population at the cost of the majority was realized. This had actually led to the imposition of ceiling and distribution of the surplus land to the landless people. The ceiling for a family (the term being defined to include parents, minor children, and unmarried daughters below thirty-five years of age) is given in the following Table 3.1.

Table 3.1: Ceiling in land ownership as fixed in 1964.

Region	Agricultural lands	Residential lands	
		Urban areas	Rural areas
Terai and inner Terai regions (in bigha)	25	1	3
Kathmandu Valley (in Ropani)...	50	5	8
Hill regions (in Ropani)...	80	10	16

Table 3.2: Ceiling on tenancy as fixed in 1964

Region	Agricultural lands	Residential lands
Terai and inner Terai regions (in bigha)	4	–
Kathmandu Valley (in Ropani)...	10	
Hill regions (in Ropani)...	20	

The Government acquired excess lands, by paying compensation – 10 times the annual tax for agricultural land and five times the taxes paid for non-agricultural lands. Surplus lands acquired under the programme were redistributed, subject to the prescribed ceilings, to tenants currently cultivating them or members of their family, owners of adjoining holdings, and other tenants, in that order of preference. Landless persons came at the bottom of the list, because the main purpose of those measures was to consolidate existing holdings into economic units, rather than to create a multitude of uneconomic holdings.

Table 3.3: Land obtained from land ceiling fixed by Land Act 1964.

Development Region	Districts	Acquired land (bigha)
Eastern	3	6322-1-15
Central	3	3185-2-1
Western	3	3518-11-8
Mid-western	3	31515-9-0
Far western	2	3263-19-16
Total	14	

Source: Hadbandi. CRSC (not dated)

The tenants were entitled to permanent tenancy rights on the agricultural lands tilled by them. Their eviction is permitted only if they do anything to reduce the value or productivity of the land, default in the payment of rents, or discontinue cultivation for

one year. In any case, landowners were permitted to evict tenants for these faults only through a legal action.

The Act also fixed the rent on the land for the tenants, which is as follows:

Table: 3.4: Agricultural rents in Kathmandu Valley (Pathis/Ropani) and Terai (Mounds/Bigha) as per the 1964 Act.

Grade of land	Kathmandu valley		Terai	
	Rice land (khet)	Un-irrigated lands (Pakho)	Khet	Un-irrigated land
Abal (grade I)	23	10.12	15	8.5
Doyam (grade II)	18.75	7.25	11.5	6.5
Sim (grade III)	8.62	7.87	5.5	–
Chahar (grade IV)	8.62	7.87	5.5	–

Table: 3.5 Rates of compulsory savings in different regions

Category	Terai (per bigha)	Hill region (per ropani)
Landowners cultivating by themselves	½ mound	3 mana
Tenants	6 ser	1 mana
Landowners giving the lands to tenants for cultivation	14 ser	2 mana

There was also a policy of compulsory savings from the farmers (Table 3.5). According to the prescribed rates, Rs. 120 millions were collected from savings between 1964 and 1969. Rs. 80 million was used for the supply of agricultural credit through village-level committees, and the rest (Rs 40 million) was deposited with a government agency responsible for the mobilization of the saving for the benefit of farmers. This saving programme ended in 1969, reportedly because of corruption at high level. Many people did not get back their savings.

Until 1964, the Zamindari system of collecting the land revenue and allocating the land for cultivation was in practice. Under this system, the Zamindars (landlords) used to collect land revenue from other holders on behalf of the government. This system was also abolished in 1964.

Resettlement was also a part of the reform program. The planned resettlement programme began in 1964 with Israeli aid based on survey in Terai with suggested other possible resettlement area. The Nepal Resettlement Company established during the year. However, the company launched its first planned resettlement

project in Nawalparasi district (eastern Nepal) in Rapti Valley. Heavy migration from hills to Terai compelled the government objective of organizing land resettlement on a massive scale.

Despite the policies and programmes adopted and occasional revisions made, the government seems to have failed to fully implement the law because of the resistance of the landowners, lack of cooperation between government departments together with the lack of clarity in the administrative and bureaucratic procedures related to its implementation. The long period of gestation between the announcement of land reform and subsequent slow enforcement enabled large landowners to evade the legislation. Government implemented the program in a phased manner, firstly in 16 districts. It was to be expanded to 32 districts in another phase and then to all over the country. This phased implementation of program gave a time to landlords to hide their land property. Accordingly, government could not get much land above the ceiling. It was able to identify and redistribute only 1.5% (29,124 hectares) of the total agricultural land (Chapagain, 2001). Even in the districts where a ceiling was imposed, cadastral surveys lagged behind and delayed the completion of the enforcement process. There was no accurate information as to the land ownership and area. This all led to the failure of the programme.

Ghimire (1992) describes the political economy of landlessness and land reform in Nepal in detail. He argues that good intention of land reforms initiated by democratic government formed through election in 1960 was thwarted as the government was removed by an alliance made by landlords, army and the monarch. Land reform carried out after enactment of Land Reform Act 1964 could only appropriate about 1.5 % of the surplus land that could have been appropriated if the implementation was done properly. This all land was again distributed to poorer families, but in the name of male. The changes in this Land Reform Act (until now there are five changes) did not bring any perceptible changes in land reform. Moreover, one of the reasons for less effectiveness of Land Reform Act 2064 was that it kept the high ceilings of land ownership, favouring the landed people.

3.2.1 Impact of policies and programmes

Following effects and impacts of the policies and programmes of the land reforms are important (Shrestha, 1997).

- (1) Gradual effect of the land reforms resulted into absenteeism among landowners who in most cases have placed efforts to earn more from the limited land they

own. At the same time, they are making fuller use of the facilities offered by the government in terms of inputs and improved technology. On the contrary, the poorer farmers, those targeted for the government programmes, were deprived of the benefits due to their inability to obtain access to the facilities owing to their weak social and economic position and the lack of their organization.

- (2) Another important effect of the land reforms has been that the agricultural land which was traditionally considered as a source of wealth and prestige has no longer been considered to be a desirable form of investment by non-farmers. The reforms have made it clear that land does not hold any future prospects particularly for those who do not personally till by themselves. This had led people to seek avenues for investment on other non-agricultural productive sectors. But in non-agricultural sector also there was no real progress. Therefore, there also was no investment. Most of the investment went on unproductive sector like conspicuous consumption of foreign goods, housing and in land speculation in urban areas.
- (3) Land reforms started with a great favour in 1964. However, it was not pursued as envisaged. This statement supports by the fact that the current activities of the land reforms offices in the districts are confined especially to collection of payments on loans advanced by village committees and to mediation in disputes between the landowners and the tenants.
- (4) Policies developed in the past were as a political propaganda than a social reform; it was treated only as a political tool.
- (5) The experiences so far suggest that the attempts to achieve present policies and programmes on land reforms do not seem to be compatible with the existing social and economic systems, and therefore, have little chance of success.
- (6) Under the then system of tenancy, the tenants had little interest to invest on land because they were tied with the landlords to the same piece of land. This was also a situation of dual ownership, i.e., the land was owned by the landlords and the tenants. The tenants would get half the land they cultivated if the landowner wanted to change the tenants. But this system was removed in 1996 after asking the tenants to claim for their share of the land. There were also a large number of farmers who cultivated the land belonging to others, but who had no formal tenancy rights. Their rights have been curtailed. Now there is a big problem of unregistered tenancy.

Impact of land reform on tenancy reform was found to be mixed. In fact, land reform programs under the Land Act 1964 are also called tenancy reform, since reforms of tenurial conditions were the main focus of the program. Attempts were made not

to abolish outright all absentee landlords and intermediary interests in land, but to strengthen the status of tenants and gradually turn them into landowners. The Act stated that tenants may only be evicted after evidence has been produced in court that they have defaulted in payment of rent or mismanaged the farm. About 1.8 million tillers were identified by the administration till the eighties and 1.5 million provisional certificates of tenancy rights were issued. Provisional certificates were gradually replaced by permanent ones though the former were equally valid (K.C, 1986)

- (1) The Lands Act 1964 with subsequent amendments in 1968 made provision that the land rent shall not exceed 50 percent of the main annual crop. Also there were the provisions that the prevailing rate, if lower than 50 percent, shall be retained. In those districts where rents have been fixed absolutely, the peasants are reported to have been comparatively better off (APROSC, 1977).
- (2) For equity considerations and to relieve the peasantry from age-old indebtedness, the Lands Act of 1964 also had a debt determination provision. Under this measure, the amount of debt determined based on the loan particulars submitted by money lenders and farmers involved nearly Rs. 187 million of which Rs. 30 million was reduced and 50,000 farmers were made debt free. This was a significant achievement of the programme (K.C, 1986).
- (3) A Compulsory Saving Scheme was made an integrated part of the programme to create the Agricultural Development Fund and help farmers be independent of traditional sources of finance that charged high interest rates.
- (4) The status of tenants did not satisfactorily improve. The tenancy was not exclusively secured. The owners of tenant land had a feeling that tenancy right is the most cumbersome in landed property, and they did not hesitate to seek loopholes.
- (5) Rents fixed under the Land Act have not been practiced exclusively in all districts. Though the Act forbids exacting rent in more than the one crop, taking rent in all crops is still practiced.

There has also been gradual reduction in land area under renting (Table 3.6). It is difficult to correlate this declining trend with land reform measures. But the drastic decline in land area under rent from 1964/65 to 1971 was certainly due to land reform program. This decline was not due to the fact that tenants were converted to landowners or due to reduction of dual ownership. But there are several reasons for this. The most likely ones are the influence of landlords over tenants to withdraw their land, increase in population, unavailability of new tenants for landlords, lack of timely survey and so on.

Table 3.6: Land Area Tilled By the Tenants

Period	Land Area (%)
1961	25.48
1964-66	24.15
1971	15.76
1981	5.91
1991	8.78
2001	8.68

Source: Report of High Level of Land Reform Commission, 1995.
Figure fore 2001 was obtained from Agricultural census, 2001.

The dual ownership system that was created by the tenancy reform process was also not effective for both security of tenants and farm productivity. It may be because of this fact that this system was removed in 1996. The dual ownership system had the following negative consequences (Shrestha 1997).

- (i) Lack of tenants security due to procedural delay and harassment from government bureaucratic process and from the landlords. Laws targeting tenant farmers were not beneficial to them.
- (ii) Agricultural productivity did not improve due to lack of rigid policies on land rent, lack of resources and lack of attention of tenants to land and crop development.
- (iii) Neither landlords nor the tenants were serious on land improvement and therefore, there was no permanent development of land.
- (iv) Landlords were also becoming inactive and had given less care to their land.
- (v) There was lack of opportunities for surplus (income/production) mobilization for development.
- (vi) Increased level of social distortions was seen due to cases between landlords and tenants in the courts.
- (vii) Lands were also left barren (or just given the impression that they were cultivated) by landowners as they were hesitant to give land for cultivation to tenants because of fear of tenant rights, which had adversely affected total production also.
- (viii) Landlords gave lands to Indian citizens for cultivation than to Nepali nationals because the later would not claim tenancy rights. This was particularly so in Terai.

One major objective of both land reform and resettlement programmes was to add incentive to agricultural development by diversification, modernization and increase in production. In fact, there are not sufficient systematic studies so far undertaken with respect to the impact of land reform on agricultural development. Some studies have shown some positive impact of land reform on agricultural production. According to a case study in eastern Nepal where successful experimentation of land reform was done, total agricultural production increased from 4315 mt in 1963 to 6321 mt in 1972 and the cropping intensity increased from 101 in 1963 to 125 in 1972 (Dhital, 1973 cited in Shrestha, 1997). The example of Bhaktapur in Central Nepal was encouraging, as it was one of the best districts in Nepal with regard to the availability of agricultural extension facilities, improved inputs, and supporting services from cooperatives. The tenants were secured and rent was fixed in absolute amounts at about one-fourth of the primary crop. The total production of food grains in that district was 21,457 mt in 1963 which rose to 35618 mt in 1972 -- an annual increase of 5.8 percent in total cereal production compared to the national average of 1.6 percent in the same period (Dhital 1973). But land reform was not successful in many places and agricultural production may have declined.

3.3 Reforms during 1990 to 2006

After 1990's political change, which abolished the partyless Panchayat system and reinstated multiparty democratic system, economic policies were changed. Economic liberalization and privatization were emphasized to give 'market' a upper hand in regulating the economic activities, including the land. In this context, no land reform policies were formulated. On the other hand, it made a fourth amendment (1996) on the Land Act to eliminate the dual ownership by distributing the land share to the registered tenants and then abolishing the tenants rights. It also made the provision of termination of rights of unregistered tenants (who were not able to register within given time). Consequently, this provision has negatively affected more than 0.45 million unregistered tenants who were not able to produce legal documents (Pokharel, 2005). Another report states that there are about 0.56 million unregistered tenants (Basnet, 2008). There are a large number of mixed tenants (15 % of the total holdings), rather than pure tenants (1.9 % of total holdings) as most people cultivate their own as well as rent in other's land. Tenancy is high in Terai, where slightly more than 20 % of the land holdings are cultivated by tenants - either as mixed tenants or as pure tenants. Even though the land reform was not a priority for the government during this period, it (the then prime minister Sher Bahadur Deuba) announced land reform

programme in 2001 by reducing the land ceiling as fixed in 1964 (Table 3.7). This was to reduce the support to Maoists from the marginal farmers and landless people. The Maoists armed conflict was at its height during this time.

Table 3.7: Land ceiling fixed in 1964 and proposed in 2001.

Category of areas	As per Land Act 1964		As proposed in 2001 by PM Deuba
	Ceiling provision	Additional areas provided for housing	
1. All hills/mountain areas	80 Ropani (4.07 ha)	16 Ropani (0.8 ha)	70 +5 rop (3.75 ha)
2. Kathmandu Valley	50 Ropani (2.54 ha)	8 Ropani (0.4 ha)	25+5 rop (1.5 ha)
3. Tarai and inner Tarai	25 Bighas (16.93 ha)	3 Bighas (2.30 ha)	10+5 bigha (7.43 ha)

When the Communist Party of Nepal (Unified Marxist-Leninist) came to power in 1994, the government headed by Manmohan Adhikari had shown some concern for land reforms and constituted a high level commission to recommend reform measures. However, the recommendations of this commission (called Badal commission) were never implemented. Had the Commission recommendations been translated into practice, the marginalised communities would have had increased access to land resources. The Badal Commission has identified problems related to land and suggested pragmatic measures for the overall land reform in Nepal.

Table 3.8: Proposed ceiling on land for the Kingdom of Nepal as recommended by Badal Commission in 2051 BS (1995)

Region	Maximum ceiling (in ha)	Maximum Ceiling (in Bigaha/Ropani)
1. Terai and Inner Terai	3 ha	4.5 Bigha
2. Mid-hill Area	2 ha	40 Ropani
3. Himalayan Area	4 ha	80 Ropani
4. Kathmandu Valley	1 ha	20 Ropani
5. Urban Area		
• Municipal area of Kathmandu, Lalitpur and Bhaktpur area	0.5 ha	10 Ropani
• Other municipalities, District Headquarters and other fixed urban Areas developing to become urban cities	1 ha	20 Ropani or 1.5 Bigha

Source: Badal Commission, 2051 BS (1995)

After abolishing the 'dual ownership' on land in 1996, government initiated 'land bank' policy, which is considered as 'market-led' land reform program, which aims to match 'willing sellers and willing buyers', and provides credit, payable in 15 years, to poor landless and marginal farmers to buy land. It was implemented since 2005. This was also supported by World Bank. The activists working in the land rights²⁶ issues raised the question that the landlords displaced from villages because of the conflict benefited from this program instead of poor and landless people. It was also not be able to address other fundamental land related problems such as tenancy rights of unregistered tenants or acquiring land above ceiling or land fragmentation, etc. After the 2006 political change, this program was formally stopped.

3.4 Reforms and proposed reforms after 2006

The political change in Nepal that occurred since 2006 has brought the land issue in the forefront again. The political protest in April 2006 was also based on one of the promises that there will be better land tenure conditions in the country and those landless and marginal farmers will have better access to land and natural resources. Maoists have been promising that they are fighting for the just land distribution through 'revolutionary' land reform program. It was largely claimed that this agenda of the CPN (Maoists) had attracted many landless people to their fold.

The Comprehensive Peace Agreement, CPA, (November 2006) made between seven political parties and Maoists to end the armed conflict had also emphasized land reform. Item 3.6 of the agreement says 'to follow the policy of implementing scientific land reform by ending the feudal relations in land ownership'. Item 3.10 states – 'to arrange land and socio-economic securities for socio-economically disadvantaged groups like squatters (sukumbasis), Kamaiyas, Haliyas, Harawu-Churawas and the like'. Similarly Item 7.5.5 states that 'except according to the law, no individuals property will be seized or confiscated, and both parties agree on this'.

The Interim Constitution formed in 2006 and updated in 2007 has its base in CPA. It has also provisions for land reform. Item 19(3) clearly states this. Items 3.3 (f) and 3.3 (i) are the same as Items 3.6 and 3.10 of the CPA. But the interim constitution has a detailed item on rights to property also. It says:

- Every citizen has a right to acquire, own, sell and use the property according to existing laws.
- Except for public interest, state has no right to confiscate or acquire the land of the citizens. But this does not apply to the property that has not been acquired rightfully.

- The state will pay the compensation if it acquires the land of a citizen for public interest or for scientific land reform. Compensation amount, its basis and the procedure of acquiring the land will be determined according to the law.

The Interim Constitution 2007 has a provision of scientific land reform. As per the Interim Three Year Plan of the government (2008-2010) this is meant –

- end of feudal relationship existing in land ownership and land relations;
- implementing land ceiling for social justice and productivity;
- land rights to those who uses labour and skills on land;
- landless farmers provided with land for shelter;
- determining the rights to farmers cultivating guthi, ailani (public land), and parti (barren) land;
- land records, land administration and land related services to be made scientific and efficient;
- preparing a 'national land policy' that encompasses all land related issues and implement that policy; and
- co-ordinated programmes in agriculture, irrigation and physical development to increase the production and productivity of land.

3.4.1 New prospect after the constituent assembly (CA) election

The CA election was held on 10th April 2008 in which CPN (Maoists) emerged as a largest party with about 37 % of the seats in 601 members' assembly. In this context, it would be useful to examine their election agenda on land reform. Their agenda was to have radical or revolutionary land reform. Their agendas are:

- To replace subsistence farming with commercial and professional farming.
- Implement revolutionary land reform to abolish feudal land relations and absentee landlordism. Basic features of this reform are:
 - The real cultivator tenants, freed Kamaiyas, landless farmers and poor farmers will get free land, i.e., land will be distributed freely to them.
 - Land ceiling will be fixed separately in mountains, hills and Terai.
 - Small farmers will be organized in co-operatives. They will be encouraged to cultivate land using modern techniques, diversify cropping and go for commercial/professional farming. The tax will be imposed on the land remaining fallow²⁷.

The other parties like CPN (UML) and Nepali Congress also have agendas for land reform, but their agendas seem to be more reconciliatory and wish to get national consensus. The Terai based regional parties, which have come to power because of ethnic or identity politics, seem generally averse to land reform. Their agendas were mainly concerned with increasing the production. Generally there is a feeling among Madhesi people in Terai that land reform means distribution of Terai land to hill migrants²⁸. Land distribution is more skewed in Terai than in the hills, and there are relatively more landless people in this region, particularly in eastern part.

3.4.2 Gender perspective in recent policies

Until recent past, gender discrimination in the ownership and access to resources, including the land, was rampant. This relates to common practice in Hindu religion, which enforces patriarchy in different forms of daily activities. But just before the recent constitution, there were several discriminatory regulations related to property rights to women. There are a few traditional ways that women may get access to property on which she has absolute rights. This is called *stridhan* (literally meaning women's property), or *pewa* (literally means one's own) which may originate in the women's own earnings, gifts from her parental household, her husband, his household or from any other sources.

The latest legal provisions related to property and other rights do not seem discriminatory against women. This has been clearly stated in new Interim Constitution, 2063 (2007). In part 3 of the constitution which is on 'fundamental rights', it has been clearly stated that women have equal rights. In article 20, it has stated that:

- There shall be no discrimination on account of being women.
- Each woman has rights to reproductive health and other rights related to reproduction.
- No physical, mental and other violence shall be committed to any woman and those committing such violence shall be punished by law.
- There will be equal right to parental (ancestral) property for men and women.

Similarly, part 4 of the constitution clearly indicates that there is equality between men and women. In article 33 (dha), it is stated that 'all discriminatory law' shall be terminated. Similarly the article 33 (da), all international regulations/covenants/agreement on which Nepal is signatory shall be strictly implemented. This means that many regulations/agreements like CEDAW can be used for demanding equal rights for women. Some policies that favour women include:

- Keeping disaggregated data on women's land ownership and other data related to women.

- 50 % reduction in land tax for registration of land if the title holder is women.
- In land distribution, husband and wife's name will be written in lalpurja (land certificate) as title holders.
- To increase the access of farm labourers to land, Dalits, Indigenous peoples, Janajais, Madhesis (Terai groups) and women will be given priority while distributing land.
- In community forestry, the policy is to keep at least 50 % of office bearers (of users groups) to women. Similarly, membership is kept on both husband/wife name, i.e., a male and female of a household become a member of the group.
- In leasehold forestry also membership is given jointly to both husband and wife.

It seems that there is a good impact of the policy of giving exemption on tax if the land registration is in the name of a woman. In the first year (2006), 10 % discount was given, which was increased to 20 % (2007) and then to 50 % now. When the policy was in its 11th month in the second phase, a study was conducted in 13 land revenue offices across the country. In these periods, 25 % of the land registration was in the name of women (67,048 out of 163,495). The tax exemption amounted to Rs 137.2 million in these 13 offices. Comparing this to general 10 % of land ownership, the land registration in the name of women seems to have increased. The land tax is about 2 % of the total cost of land transaction in VDC and 4 % in municipalities. As the land tax is high in urban areas because of high prices, it became an incentive to have land title in women's land²⁹.

3.4.3 Indigenous people's perspective in national policies and laws

After 2006 political change, attention to 'indigenous peoples' has increased. The Interim Constitution 2007 has emphasized their social, cultural, economic and political rights. On the issue of territorial rights, government has proposed to make a federal state based on the criterion of caste/ethnicity/Janajatis (i.e., based on where the ancestors lived). CPN (Maoists) were the firm advocates of federal political structure and carving of states based on above criterion. They have proposed 11 autonomous states and other additional sub-states within the state³⁰. But other parties have not come forward with a model of state restructuring, but confirm to the idea of federalism. Therefore, policies on indigenous peoples will be based on how ethnicity is taken into account in making federal structure. Nepal has now ratified ILO Convention 169 which gives some special provisions for indigenous peoples, especially in benefit sharing and decision-making if there are development projects in their territory. But there is a wide diversity within the indigenous peoples of Nepal. The problems of endangered and highly marginalized groups are related to lack of access to resources and general lack of ownership of land.

3.5 Other laws and policies related to land

Even though the above policies are the major ones affecting the land ownership and management, there are also other laws and policies related to land. These are briefly described hereunder.

Land Acquisition Act, 1977

This Act was promulgated to establish procedures for acquiring private lands for the purpose of public use. Section 3 of this Act empowers the government to acquire any kind of land if it is deemed necessary for public purposes by paying due compensation to the landowner as per the provisions made in the Act. Designated officials can determine the amount to be compensated.

Birta Abolition Act, 1959

The Birta Abolition Act, 1959, is one of the first Acts promulgated to effect land reforms after the end of the Rana regime in 1951. This Act abolished all individual rights on Birta forests and lands, and nationalized them without paying any compensation to the previous owners. It prohibited landlords from undue (unpaid) labour and payments other than agricultural rents from their tenants.

Land Revenue Act, 1977

The main objective of this Act is to collect effectively land revenues from the cultivable land. Section 3 of this Act makes arrangements to establish land revenues offices in districts. The land administration offices and land administrators working at the time of the commencement of this Act were termed as land reform offices and land reform officers to carry out the functions prescribed in the Land Reform Act, 1964.

Trust Corporation (Guthi) Act 1976

The Trust Corporation Act, 1976, was legislated to regulate Guthi land (Raj Guthi-endowments made by the ruling families and Duniya Guthi-endowments made by private individuals). This Act defines the role of the Corporation to manage the Guthi lands.

Land Survey and Measurement Act, 1962

The aim of the Land Measurement Act, 1962, was to measure and classify land resources to improve the land use system. This act therefore did not focus on protection of tenancy rights, but accepted that long term possession of land – 15 years without dispute – would ensure ownership right (Bhattarai and Pokharel, 2004).

This Act classified lands in four types in terms of quality – Abal, Doyam, Sim and Char, respectively.

Many landowners had transferred the excess lands to industries, farms and businesses to prevent losing the surplus as per the provisions in the Act. Most of these lands are left fallow since several years. The Community Self Reliance Centre argues that one fourth of the cultivable land is kept fallow (CSRC, 2004).

Range Land Nationalization Act, 1974

One of the key aims of this Act was to nationalize the rangeland for the economic interest of the people of Nepal. All rangelands of the country were nationalized and ownerships transferred to the government. However, there was a provision of exemption of rangeland based on the judgment of the government for the following purposes: a) private grazing if the land is within the ceiling fixed under the prevalent laws; and b) production of horticultural crops, medical herbs and tea. Provisions ensured that the rangeland title-holders received reasonable compensation, which would be determined by a committee formed by the government.

Agriculture Perspective Plan (1995-2015)

Agriculture Perspective Plan, which is now a major strategy for agricultural development, focuses mainly on the green revolution technology (i.e., using high yielding varieties and high level of inputs like fertilizers and irrigation). It is more or less silent on land policy except the admission that for better production and success of green revolution land reform including the consolidation of fragmentation is essential. It however does not recommend action for land reform. On the other hand, the new programmes like APP-SP of DFID aims at increasing the access of poor people to land through land leasing on a group basis.

Agricultural Policy 2004

The Krishi Neeti (Agricultural Policy) adopted in 2004 by the Ministry of Agriculture and Cooperatives targets to increase agricultural production and productivity, develop commercial and competitive agriculture and to promote, utilize and conserve biodiversity and natural resources. This policy has emphasized commercialization of agriculture.

Reviewing the land related legislative and policy interventions Chapagain (2001) concludes that these measures were largely ineffective since the government was not serious about genuine reforms. These reforms would not safeguard the interests of the privileged classes, who, in fact, were (are) the policy makers and implementers of the policies. This nexus between land ownership, political power, and bureaucracy

has been the main reason for the lack of effective land reform policies and their implementation not only in Nepal but also in many developing countries. Moreover, it should also be reckoned that land related policies are made when the problems actually strike the land-owning class. As they formulate and implement the policies, they do so in their interest first (Blaikie and Brookfield, 1987).

‘Land Bank’ and access of poor people to land

Land Bank is an outcome of market-based approach of land redistribution adopted in Nepal with the assumption that there is little land available for redistribution and only those willing to sell or buy can be matched through the bank. The notion of land bank, first envisioned by the Badal Commission, to purchase surplus land from landlords and distribute to the poor farmers came into operation in Nepal in 2005. The government has assigned this responsibility to Agricultural Development Bank, facilitating the poor farmers’ access to land by providing low interest credits with a pay-back period of 15 years. Land bank will pay compensation to the landowners. Loans and grants to farmers will be provided for land improvement, irrigation projects and construction of other village level infrastructures, such as, farm roads, agricultural market and power supply. Land rights activists still question the motive behind the land bank and suspect that it could rather benefit the landlords displaced from villages and not the poor and landless people. It will also not be able to address other fundamental land related problems, such as, tenancy rights of unregistered tenants or acquisition of land above the ceiling and land fragmentation. On the other hand, policy makers usually believe that there is no alternative to ‘land bank.’ For example, Ram Prakash Yadav argues that there is no land to distribute to the landless people in a way that they get a viable land holding. He indicates that there are only less than 1% households who occupy land holding of more than 5 ha. In total, they occupy less than 7% of the cultivated land of the country. In this context, even if the land ceiling is reduced to 3 ha, there will be hardly a surplus of 125,000 ha land. Considering that there are 1 million landless households, the land available to a household of this group will be less than 2.5 ropani (0.13 ha). If land distribution is done to provide only this much of land to the intended households, then it could do more harm to the poor people than benefits. Therefore, it is necessary that industry and the service sectors grow, or else national prosperity remains a far cry. For this, agricultural production needs to be increased. It is assumed that if agricultural growth rate increases by 1%, non-farm growth rate will increase by 1.5% (APROSC and JMA 1996, and Badal Commission Report 1995). To increase the agricultural production, Yadav (2006)³¹ argues that there must be a viable and economically efficient land holding. Fragmentation of land and insecurity of ownership and tenure all contribute to lower productivity and production. Investment does not take place in such small land holdings. Farming will not become

a viable economic unit. It is because of this lack of viability that many sukumbasi or landless people tend to sell off the land. Land buying and selling is quite high among the small landholders. It is because they are opting for other occupations so far as possible. In this context, he argues that 'land bank' is the only viable option. This will help landless farmers to buy land using the long-term credits. As he/she buys the land, they will not sell it off easily and go for another free piece of land. Therefore, it avoids the symbolic and repeated land distribution.

At present, Land Bank is operating to help Kamaiyas in Banke and Kailali districts. It issues them loan at 3% interest to buy up to 20 katha (0.66 ha) of land from the market with a pay back period of 15 years. Yadav (2006) further argues that Land Bank can also help the 'registered tenants (which constitute 12.2% of total farm households covering an area of 8.7%) to claim other 50% land they are cultivating. If this can be done, land will not be fragmented and it will come under the person who cultivates it. The other area that needs to be improved is the 'rental market of land' in which 'land bank' can help. For example, it can act as a guarantor that the landlord gives the land for cultivation for a long time and, according to the contract agreed upon between them. It can formalize such contracts. Fallow land can be deposited in the bank for loaning it out for cultivation. Lease-holding of degraded forest land in the hills and mountains – there is an estimated 1.3 million ha – will help to give, on average, about 1 ha land to 0.9 million households who have less than 0.5 ha land. At present, under 'leasehold forestry' programme, degraded forestland is leased out to groups of poor people for 40 years and so, it is believed that there is also a security of tenure. It is because of these advantages that Yadav (2006) argues for relevancy of 'land bank.' His arguments, in a way, echo the World Bank's policies on land. But civil society and the concerned groups have not yet been convinced with his argument. As a result, this policy was stopped after 2006 political change.

Endnotes

- 25 See for detail, Training Report, Trainers training on Land Right, 25-29 Asbin 2060, Imadole Lalitpur, Community Self-Reliance Centre, Kathmandu, pp. 6-8.
- 26 Land right is understood in Nepal as total right on the land – inheriting, selling, using, and dividing as per the decisions of its owner.
- 27 Election manifesto of CPN (Maoists). P. 26.
- 28 Kettal, Suvash Chandra. 2008. Land reform in election manifestos. Kantipur Daily. .p.4.
- 29 Dhital, Maina. 27 January. 2008. Women and Land Ownership. The Kathmandu Post. P. 4.
- 30 These autonomous states are Set-Mahakali and Bheri-Karnali (on regional basis), and, Magrat, Tharuwan, Tamuwan, New, Tamsaling, Kirant, Limbuwan, Kochhilla, and Madhes (on ethnic basis). Within Madhes, there will be sub-states like Mithila, Bhojpura and Abadh (based on language).
- 31 Yadav, Ram Prakash. 2006. 'where is the land to distribute?'. The Kathmandu Post. July 7, 2006. p.4.

Chapter

4

Activities for Increasing Access to Land and Land Rights in Nepal and Lessons Learned

There are various agencies, mainly non-governmental, that are involved in promoting land rights through different activities. Most take, what they call, a soft approach that aims at providing land rights and access to land in the following ways. As civil society or non-governmental organizations cannot bring structural changes, their activities remain within the 'soft sphere' of land reforms. The approach and modalities of implementation of their approach are discussed here:

4.1 Approaches to improve access to land

Various agencies take the following approaches to improve access to land

1. **Using the land rent market:** This is like helping to obtain land from individuals or communities on a long-term basis and giving it to landless and poor farmers to cultivate intensively. Mainly farmers grow vegetables in such lands, because they can generate more cash income in a relatively short time from this enterprise. The service providing agencies support the poor people or tenants in leasing the land and in formalizing the contract, so that landowners do not trouble them after the contract. They also provide farmers with other technical and infrastructural services like training, seeds and small irrigation facilities. The agencies like CEPREAD (Center for Environmental Policy Research, Extension and Development) and Plan Nepal have been working along this line. They organize farmers in groups and also support on individual basis. Co-operatives have been established for the purchase of inputs and marketing of the products.
2. **Using the existing legal regime for helping both farmers and tenants:** There are certain provisions for the tenants under the existing land laws and

regulations. Many of the tenants are not able to use these provisions because of their illiteracy, unawareness of the provisions and lack of social contacts and network to materialize the facilities accorded by the laws and regulations. For example, there are tenants who have not been registered while even registered tenants have not got their share of land. Some agencies like CSRC (Community Self-Reliance Centre) and other partners of Actionaid are involved in activities that help unregistered tenants register their tenancy and the registered tenants get their share of land, through negotiations with the land-owners.

3. Organizing farmers, landless workers, and tenants to empower them so that they become aware of their rights and take public and collective actions, such as, organizing demonstrations and public campaigns and filing petitions, to secure those rights. The activities of agencies like CSRC and others are related to this.
4. **Wages:** Farming sector is known for its informal arrangements and employment of labour. The labourers do not have set hours to work, and are often exploited by the landowners. There is also no standardization of wage rates. Males and females are paid different rates of wages. Formalizing the wage rates and paying equal rates to male and female for equal work is another area of agrarian reform. Some NGOs have been working on this. INSEC (Informal Services Sector) is one of them.
5. Organizing campaigns and protests for land reform and abolishing various exploitative relations in landlord-tenant-labour relations. This is aimed at empowering the exploited people – bonded and semi-bonded labourers.
6. **Arranging common properties for the poor:** NGOs and CBOs are also working to provide access to land for the poor people or their groups by arranging community lands, public lands or fallow lands. For example, in Nawalparasi district, a group of Bote (fishermen) were organized in groups and given community land (not owned privately but used by the community) to construct fish ponds to be managed in group.
7. **Developing commune and co-operative system:** Development of commune has been one of the policies of Nepal Communist Party (Maoists), who is heading the government since mid August 2008. They have also done some experimentation in this respect. They have developed these communes in Rapti district which was their base area, i.e., from where they launched their armed struggle. They had established four communes during conflict time, and they are still running now. These are: 'Juni' in Dhah of Jajarkot, 'Balidan' in Chhipkhola of Rukum, 'Ajambari' in Thabang of Rolpa, and 'Jaljala' of Jailbang. There are about 100-150 people in each of these communes. They have put their private properties at a place, eat in the same kitchen and lead a collective life. Apart from communes, CPN (Maoists) has formed more co-operatives. In three districts of Rolpa, Rukum and Jajarkot, there are more than 50 co-operatives. These are related to farming as well as

small industries. During the peace agreement, Maoists agreed to dismantle the communes also along with people's government they formed, but this has not been done yet. Maoists are in the process of expanding them.

4.2 Activities and modalities of implementation

Different organizations have adopted different implementation modalities to improve access of the poor and marginalized to land. There are some commonalities, and some differences in their implementation practices. This section attempts to assess these by taking up the case of a prominent non-governmental organization, Community Self-Reliance Centre, which is working in the area of land reform. Practices of other NGOs and a prominent INGO, Actionaid Nepal, and their coverage will also be discussed.

4.2.1 Community Self-Reliance Centre (CSRC)

CSRC is an NGO based in Kathmandu, but has been playing an important role in promoting land rights movements. Its work areas are mainly concentrated in Sindhupalchok and Kavre districts. In these districts, CSRC has helped many tenants acquire land titles on the land they have been cultivating.

A. CSRC's activities

The works undertaken by CSRC can be categorized in the following ways:

a. Organizing right holders and their action for claiming rights

To achieve this goal it has implemented the following activities:

1. Capacity development of activists and community leaders: It has organized activities like exposure tours, context analysis, building local and international linkages, and review meetings to develop the capacity of the activists, leaders, alliance members and members of people's organizations. This has helped in developing a pool of capable land rights activists in the districts covered by the movements.
2. Formation and strengthening people's organizations: Formation of land-deprived communities into groups to claim their rights is important, and it has been undertaking this task. Local activists have been playing important role in organizing these communities to secure their rights.
3. Local level awareness: Increased participation of the right holders – Dalit, Sukumbasi, tenants, Haliya, tillers or Mohi – is critical to secure their land rights. Their participation may be increased through various awareness-raising campaigns, such as, cycle rallies, processions, cultural shows, street dramas and public hearings.

4. Policy influencing: Advocacy at the policy level using the rights holders has been successful in influencing the policy in favour of land rights.
5. Moving Land Reforms Office: The movement identified the affected tenants and landless, and helped them file cases at the Land Reforms Office seeking their land titles. This approach has been quite successful and a significant number of tenants have obtained land ownership certificates in the past.

b. Strengthening and working through civil society networks and alliances

It is important that civil societies concerned with land rights should develop networks and alliances to support the people's organizations. Last year (2004), National Land Rights Concern Group, National Land Rights Forum and CSRC worked together to activate the people's organizations. National Rights Concern Group is an alliance of 30 NGOs working in different districts to develop common agenda for action. They have all taken 'land rights' as their main agenda. They have the following common approach on land rights:

- rights-based approach for natural resources management;
- mutual learning and replication of the best practices;
- Siding with tillers and peasants;
- Committing to peaceful social transformation

c. Policy Advocacy and Reform Initiatives

Influencing the government personnel and political parties is an important approach to bringing changes in the policy. Post-April movement, a new land act is necessary, and efforts are already underway to draft it. It is also important to influence the international community regarding the land rights issue.

B. Challenges faced by CSRC

One of the key challenges of the land rights movement is to ensure the livelihoods of the concerned people or the rights holders. As claiming land rights is a long term process, the stakeholders, who struggle for daily needs, do not usually have patience to wait and continue the struggle. Therefore, the challenge is how to ensure participation and leadership of the affected families. The targeted groups always expect support for their livelihoods if they are to be organized for the movement. As land-dependent communities are also not able to articulate their agendas and interest, they always ask support and guidance from NGOs, and in the process, become quite dependent on the NGOs.

C. Learning of CSRC

1. Dialogue with landowners is also necessary. Some of them are also willing to help. Support from them is also necessary so far as possible to convince other landowners not to exploit the tenants or the tillers and give their due shares and rights.

2. Patience and commitment is necessary.
3. Community leadership and innovative programmes are necessary.
4. Research is necessary to bring in evidence and objective analysis. This helps in making the advocacy for policy change strong.
5. Alliances with relevant agencies are also important to make an impact, which will have snow-balling effects.

4.2.2 Modalities of work done by CEPREAD (Centre for Environment Policy Research, Extension and Development)

CEPREAD has done tremendous action-oriented work to organize small farmers and landless labourers into groups and to help them in cultivation of high-value vegetables, especially the off-season vegetables. For those not having the land, it helps in leasing the land on a long term basis. It also supports small irrigation facilities, provides improved seeds and know-how and helps in group marketing. This has helped participants increase their income through the sales of fresh vegetables or the vegetable seeds. Conflict had disturbed the work of CEPREAD.

The problem with this work is the sustainability of the work, because it is seen that landless and marginal farmers always are looking for other job opportunities. Once they get these new opportunities, they move elsewhere. On the other hand, those who are cultivating vegetables on their own land, they tend to remain on land if their monthly income does not fall below Rs 5,000. Moreover, availability of cheap vegetables from India is also posing a problem.

4.2.3 Modalities of Plan Nepal

Plan Nepal's approach is also similar to that of CEPREAD. It arranges land lease from individuals or from communities for a long-term, invites the landless farmers to form groups and implement farming activities on an individual or group basis. Necessary infrastructure, mainly the irrigation, is also provided on a temporary basis. Again, they are encouraged to cultivate cash crops like vegetables which give a quick return. Conflict has also been disrupting the work undertaken by Plan Nepal. Moreover, problem of sustainability is also there. Landless farmers do not have settled life, and they prefer to move from place to place in search of work. Or, at least the main person of the family – often father or husband – moves out once he gets job elsewhere. This disrupts the work. Group dynamics is also a problem, because there is always conflict among the group members because of their differing interests and constraints.

4.2.4 Actionaid Nepal

Actionaid Nepal has also been taking up different issues related to land rights. It works through its partners like CSRC at the grassroots. The basic aim is to increase the access of small farmers and landless people to land through different context specific practices. Its approach, coverage area and partner organizations are listed below. It would be worthwhile to investigate the experiences of these partner organizations and in finding out what works best.

Issue 1: Tenant Rights

SN	District	Local partner
1	Khotang	JSSN (Jana Sewa Samaj Nepal)
2	Rasuwa	NAF (Nepal Agroforestry Foundation), MSN (Manekor Society Nepal)
3	Dolaka	ECARDES (Ecology, Agriculture and Rural Development Society)
4	Kapilvastu	SSDC (Siddhartha Social Development Centre), SS (Sharad Samaj)
5	Dhanusha	SODEP (Social Development Path, Nepal), DSS (Dhanusha Sewa Samiti)
6	Sindhupalchok	CSRC (Community Self-reliance Centre)
7	Siraha	CSRC
8	Mohattari	CSRC
9	Chitwan	CSRC

Issue 2: Ukhada

District – Nawalparasi. Partner: Indreni Social Development Forum

Issue 3: Squatters/Urban Poverty

SN	Place	Local partner
1	Kathmandu	JSSN (Jana Sewa Samaj Nepal)
2	Lalitpur	NAF (Nepal Agroforestry Foundation), MSN (Manekor Society Nepal)
3	Dharan	ECARDES (Ecology, Agriculture and Rural Development Society)
4	Biratnagar	SSDC (Siddhartha Social Development Centre), SS (Sharad Samaj)
5	Inaruwa	SODEP (Social Development Path, Nepal), DSS (Dhanusha Sewa Samiti)
6	Itahari	CSRC (Community Self-reliance Centre)
7	Damak	CSRC

Issue 4: Bonded labour

SN	District	Local partner
1	Kanchanpur	NNSWA (Nepal National Social Welfare Association)
2	Bardia	RKJS (Radha Krishna Tharu Jansewa Kendra)
3	Banke	Mukta Kamiya Samaj (MKS), SVVM (Samudaya ka lagi Van Vatavaran Manch), FN (Faya Nepal)
4	Kailali	SVVM, MKS, FN
5	Dang	SVVM, MKS, FN

Issue 5: Dalit

SN	District	Local partner
1	Siraha	DSSS (Dalit Samaj Sewa Sangh), DJKYC (Dalit Jana Kalyan Yuba Club)
2	Kailali	Regional Dalit Network (RDN), Dhangadhi

Actionaid Nepal works, as mentioned above, in 5 issues related to land rights. These are tenancy rights, Ukhada problem, squatter/urban poverty, bonded labour (kamaiya) and Dalit. Four of these issues are mainly centred in the rural context and one in the urban areas, where the concern is mainly the housing rights – access to land to have a residence. The Dalit consider land as the most important issue for their empowerment. Therefore, it is important to include Dalits as the target group and partner for land-rights movement. Freed from the bonded labour system, it is important to make the Tharu economically independent to reduce the caste-based discrimination. Land is considered as a means to make the Dalit independent in economic terms. Documenting the experiences of partners working in these different issues would be very important for other land reform activities.

Chapter

5

Challenges for Land Reform in Nepali Context

Discussions on the preceding chapters on land ownership and distribution situation, programmes and policies, and problems faced by the landless but land-dependent communities give us some insight into the challenges facing the land reform sector. These challenges are:

1. Defining land reforms
2. Defining land rights
3. Defining what a farmer family means
4. Debate on the efficiency of small size holdings
5. Deciding on the modality of land reforms: market-based Vs state-led land reform
6. Determining land ceiling
7. Viable land holdings or equitable distribution of land
8. Developing non-farm activities and guaranteed employment Vs access to land
9. Protecting the rights of indigenous people and women
10. Developing and improving the capacity of institutions and human resources for land reform programmes
11. Local Vs foreign investment on land
12. Land reform for food sovereignty
13. Developing a feeling of security of land rights
14. Tenurial security Vs land distribution in the context of high mobility

5.1. Defining land reform

At present, land reform is mostly equated with land capture from the land-owners and its distribution to the landless and poor families. At least landless and marginal farmers and the landowners are led to understand 'land reform' in that sense. This has been creating misunderstandings and conflict among the landowners, tenants and

other land-dependent communities. For the experts, however, land reforms means not just re-distribution of land or providing the poor and marginalized with access to land. For them, it also means agrarian reform in order to capture other dimensions of land reform. Sharma (2006) has identified the following five objectives of land reforms, clearly indicating that land reform is much more than land re-distribution: The prominent land-reform activist of Nepali Congress Party Mr Jagannath Acharya also echoed similar objectives when he advocated 'jus ko jot us ko pot' (land to the tillers). This clearly indicates that 'land reform' is much more than just land redistribution.

- Social justice in land ownership and land distribution;
- Increase in land productivity;
- Land use decisions – where to farm, keep industry, forest, pasture etc;
- Agriculture and non-agriculture structure – Farming is not enough for all; hence, the problem is how to create non-farm opportunities and balance between farm and non-farm activities?
- And, how to develop institutions for land reform?

Land redistribution must not be seen in isolation from broader support to the agricultural sector. Newly established farmers will need a mix of technical support, as well as help in accessing credit, markets and inputs. In Brazil, which is known for extreme forms of inequality in access to land and violence against peasants and land labourers, agrarian reforms are being implemented after electing Luis Inacio Lula de Silva, popularly known as 'Lula' as its president. He promised agrarian reforms and access to land to millions of families suffering at the hands of landowners. Recent progress made by Lula's government in redistributing land includes the allocation of a larger share of support to the family sector as a whole, including resettled farmers and giving legal rights to the land traditionally occupied by peasants for farming. This aims to ensure that they have sufficient support to be viable, rather than maximizing the number of new land recipients.

5.2. Defining land rights

There has been a lot of debate about land rights, but it is poorly understood. What does it mean in the context of Nepal?

Debate on land rights arises because land is viewed as different type of capital from different schools of thought. The Marxist political-economic perspective tends to define land as a gift of nature, meaning that no one, except those who work on it, should have the right over the land and, that too, until he/she is capable of cultivating it. On the other hand, the capitalist economic principles regard land as any other form of

capital, with total individual right. The second approach is not totally suitable for a country like Nepal, where there is a need to increase production and improve food security of the people. As the state has the responsibility for food security, it must have the right to control the distribution and use of land, because, without it, food production is not possible in the given technological development.

It is practically not right to give land to families and households that just tend to occupy it, but engage in numerous off-farm activities to maintain livelihood. As the price of land is high and is growing by the day, people might occupy more land for accumulating the wealth. Many landless sukumbasi families are also found doing this.

There is also a debate on 'rights to ownership of land for the farmers' or 'rights to secure access to land for a long-term basis or on perpetual basis until they work on farm.' Under the first approach, farmers who have acquired land through re-distribution are entitled to sell it if needed. Whereas in the second approach, farmers will have a secure access to land (whether state land or private land in reasonably good terms and conditions) not only for his life but can also inherit this right until they are involved in farming. For example, in France, the second option is very common. There, the farmers get land on long-term contract, and is arranged by the government and farmers organizations. Land is very expensive and farmers usually do not like to purchase it. Those who want to retire can give the land back. The government also comes up with schemes, such as, arranging for long term contract to attract the young people in farming.

Civil societies in Nepal generally define land rights from the first approach. They consider 'land rights' as the ownership rights of the actual tillers over the land they cultivate. According to this view, these rights include the freedom of selling, transferring, mortgaging or inheriting the land. Advocates of these movements argue that land rights also include the establishment of the access of landless to the land and ensuring the right of producing in the land, selling and distributing the production and right of making independent decision over matters relating to cultivation.

But according to legal provisions in the country, land rights can be defined as the right of the owner to acquire, own, possess, sell and otherwise dispose land under the titleholder of the land. Before the Fifth Amendment of the Land Act, 1964, tenants were not allowed to sell, mortgage or otherwise dispose of land tilled by them. But after the abolition of the dual ownership, tenancy rights have simultaneously ceased. In essence, there is now no tenancy right³².

National Conference on Water, Land and Forest, held in Kathmandu in June 2005, concluded that 'structural change is a must to have the people's innate access upon

water, land, and forest' and 'access to land for land-dependent communities is a fundamental human right.' Moreover, 'land rights' should be seen as an integrated access to all natural resources, meaning that while assuring access to land to the needy, their rights to water, forests and other natural resources required for farming should also be ensured.

The conference identified the following issues as most crucial:

- The rights of the tenants should be guaranteed
- The rights of the freed Kamaiya should be established
- The exploitation of Haliya, Kamalari, Balighare, Doli Pratha, and Haruwa should be ended along with provisions of appropriate livelihood opportunities
- Ukhada land should be registered and handed over to the tillers
- Indigenous people, including the Chepang, should be given land where they have settled down over generations

Regarding water rights, their concerns were:

- Local people's ownership system should be established in water-based projects
- National interest and people's welfare should be prioritized in bilateral water-related negotiations
- National water resource management should be freed from the control and influence of various financial institutions and vested interests
- Flood victims and water dependent people like Majhi, and Bote should be supported for alternative livelihoods
- Provision of irrigation subsidies for adequate irrigation facilities

Regarding forests, the main issues considered are:

- State intervention in community forestry has been increasing and community rights on forest resources have been seized
- There should be legal guarantee for the community rights to natural resources and distribution of the income
- Introduce policies which can redistribute income of the community forests to the poor, Dalits and indigenous people

Considering Nepal's situation, it is important that those families who depend on land for a major part of their survival should have the ownership to the land they cultivate. They have the right to that land. Their rights to the local forest and water resources should be established. Similarly, the male and female should have equal rights. Therefore, property should be in the name of the family or of both male and female

head of the household. If needed, they can also sell it, and in that case they can get the value of their investment on that land.

5.3 Defining a farmer

The present thinking is that all Nepalese are farmers. Unless one can show the proof that he or she is engaged in non-farm work, the government considers him/her as a farmer. Those working in government offices also consider themselves as farmers. They, in most cases, have land, and in some cases, may also have cultivated it by themselves.

For a large majority of farm households, farming has become a part-time activity, especially in the hills. They do not derive their full food security from the land that they hold. They do not devote their full time to farming, often because yield is low. Farming has become one of the components of the diversified livelihood system of farm households.

As farming has not been a full time activity, it has not been done properly with care and seriousness. Most households take it as a 'traditional activity' to spend the unused time and get whatever can be produced.

It is interesting to note that land selling practices are high among the small holders. Employment of wage labourers is also high among the small land holding groups.

On the other hand, from the food security perspective, having access to land, whatever the size, is positive because it saves the individual or the family from the vagaries of the market. In case there is an artificial shortage in the availability of food in the market, having some food from own production can help the poor people who cannot stock food. On the other hand, it is important that the food production should also increase. Unless a farmer has a critical mass of resources to engage in farming activity fully, he/she will not work towards maximizing the production. It is one of the reasons that land has not been fully utilized even in cases where land holding is small. Even though 'cropping intensity' seems higher in small holdings as compared to larger holdings (as argued by the Badal Commission report), this applies only up to the farm holding which are viable for a full time occupation of a farmer's family.

Therefore, a farmer is one who at least gives more than three-fourth of time of his adult family members (excluding those pursuing education) in farming and derives more than three-fourth of household income by or through farming activities. These people should have access to land that leads at least to a viable land holding.

In land distribution programmes, emphasis should be given to make the farmers' – as defined above – land holding viable.

5.4 Debate on the efficiency of small size

One of the premises to argue for fixing land ceiling, acquiring excess land and distributing it to landless and marginal farmers is that small farms are efficient than the bigger farms. Especially, a family farm is considered as most efficient in terms of production and conservation of resources. There was a popular saying that 'traditional farmers in the developing countries are efficient but poor.' This led to the policy of increasing support for poor farmers through credit and know-how. For the evidence of efficiency, the cropping intensity of small farmers vis-à-vis larger farmers is shown. Generally, it is seen that cropping intensity increases as we move down the ladder of farm-size hierarchy. This has also been argued by Badal Commission report (1995). In fact, it takes this argument as a basis for land reform. For example, Badal commission reports that cropping intensity is 166 in farms of less than 1 ha and 117 in farms of more than 5 ha. The trend is also declining as farm size increases. The report also shows that income/ha is Rs. 12,000 in small farms and only Rs. 5,000 in farms of more than 5 ha. On the other hand, it can also be argued that these higher outcomes in small farms (i.e., high cropping intensity and more income/ha) could be due to more exploitation of family labour. However, this may not happen everywhere and for every type of small farmers. From the present understanding, this trend may be seen up to a level of farm holding where farming is viable for full-time employment of farmer's family. Because, it is seen nowadays that land selling, renting and employment of seasonal labourers is also high among the small farmers. As farming could not provide them the full livelihood and opportunity for social and economic mobility, they are increasingly moving away from farming, retaining the ownership and cultivating it as far as free labour is available in the household. There is more out-migration among small land holders. Land has been helping them in taking the credit for out-migration. Because of all these things, real wages in farm have declined and also adversely affected the wage labouring groups.

Smallholders versus large farms

There has been long-standing debate about farm size and productivity. Those favouring large farms argue that the era of the smallholder farmer is over, and that for reasons of efficiency, small farms should be consolidated into fewer large holdings, allowing for economies of scale and increased mechanisation. They reason that the impoverished peasant farmers on the margins of existence have little ability to generate a surplus for investment in the farm enterprise and have limited capacity to adopt new technology, access world markets, and provide employment and good wages to the local rural workforce. Others favouring small farms dismiss such arguments and note that for many crops, there are few, if any, economies of scale in agricultural production. They argue that there can be dynamic smallholder production, in which innovation and investment are very evident, as people adapt to new market opportunities and changing environmental conditions. Moreover, they also argue that there can be inefficient and extensive large farms with few workers, low wages and poor productivity.

There is ample evidence to support either case, depending on the type of crop, the policy context, and forms of support available to different kinds of farmers. Small farms are generally family-run, may be subsistence-based or market-oriented, using few or many external inputs, working manually or with machinery, and using the land extensively or intensively. Large farms are generally market-oriented, may be family-run like small farms or corporate based, and use few, if any, or many labourers. Both small and large farms may be resource-poor or rich, using largely manual methods or machinery, and using the land extensively or intensively. Because of this great variation in farm types any statement on the relative merits of small versus large farms can only be relevant within specific social, economic and biophysical environments.

(Source: IIED, 2006)

The empirical evidence from Nepal also reveals that profit per capita declines as the farm size decreases. This is shown in the following Table (Table 5.1). The Table reveals the following points:

- The relationship between farm size and cropping intensity varies from region to region. In Mountain, smaller farms have less intensity, whereas in eastern Terai there is a positive relationship. But it should be noted that there is no big margin in the variation in cropping intensity across the farm size. In 1995/96, big farms seem to have more intensity of cropping than other farm size. In 2003/04 also, there is not much variation, and middle farm in Tarai seems to have more cropping intensity followed by the big farms. This could be due to the economic scale in large farms and availability of more irrigation. It is seen that investment in irrigation facilities is directly related to farm size. Moreover, the availability of non-farm jobs, especially the labour migration opportunities might be the reason for reducing cropping intensity in smaller farms.
- Real profit per hectare and per worker increases with the increase in the size of land holding. This means that larger farms are suitable for making more profits.

Therefore, even though cropping intensity and food production per unit area may increase as the farm size declines, the profit per capita may also decline. This makes a case that distribution may not effectively help in 'poverty alleviation'. This argument may not be suitable as it is valid in a situation where other alternatives are available. In a situation, where there is less 'opportunity cost' of the labour, whatever is produced is beneficial for poverty alleviation. On the other hand, from social justice point of view, land distribution is also necessary for the landless people dependent on agriculture for livelihood. However, this finding has an implication for policy makers. They need to be aware of the fact that land reform involving distribution of small pieces of land cannot be the only measure of poverty reduction. It is a general practice that once the government

distributes a small piece of land, that too unproductive land, to landless people like Kamaiyas, then it considers that problems are solved. Much more other supports are required for small farmers in addition to distribution of small pieces of land. The above findings will have implications for redistribution of land because making smaller land holding is also not a solution for improving the lives of the landless people.

In recent times, efficient small farm theory has also been considered as ideologically guided because there is lack of sufficient evidence. It is considered as an output of poverty context in which family farms have to use more of their unused labour to make a survival. If one does not have other income and employment, a small farmer has no choice except to produce maximum output by maximizing his/her labour input to maintain survival. It is not a sign of relative efficiency. This is also seen in the case of Nepal. For example, when the opportunities to migrate to the Gulf countries and other places arose, members of the farm families started obtaining loan by mortgaging land and then invested it to go to foreign countries for work. Now in villages, especially in the hills and mountains, farming is virtually left behind in the hands of women and elderly. So, if small farms were efficient this would not have happened. The land sales is also said to be high in this group, which could also be due to 'distress sales.' The land again has gone into the hands of the landlords. Even after land re-distribution, the same trend might possibly happen over the time. Small farmers might sell the land to landlords under the distress sales or when they get other opportunities. Moreover, as production and productivity cannot be significantly increased in small farms, they cannot employ landless persons or wage labourers. Because small farms are using the cheap and unused family labourers, they do not provide employment opportunities for the landless persons. They cannot be vehicle of economic growth including non-farm growth in the country.

Issue 4: Bonded labour

1995/96	Gross cultivated area/h	Cropping intensity	Workers/ha	Gross cultivated output/ha	Real profit /ha	GCO/worker	Real profit / worker
Small farmers, Mountain	0.79	1.52	4.4	13,048	10,388	3,793	3,076
Small farmers, Eastern hills	0.89	1.67	3.8	15,367	12,291	4,800	3,871
Small farmers, Western hills	0.81	1.55	4.0	15,140	14,184	4,590	4,071
Small farmers, Terai	0.92	1.65	4.3	16,351	11,312	5,618	4,073
Medium Farmers, Terai	2.32	1.67	1.9	13,823	11,577	9,811	7,504
Medium Farmers, Eastern Hills & Mountains	2.22	1.58	1.6	9,170	7,100	6,935	5,471
Medium Farmers, Western Hills & Mountains	2.08	1.54	1.7	8,165	7,543	5,899	5,122
Large Farmers	6.62	1.62	0.8	11,007	8,712	17,414	13,689
All farmers	2.11	1.61	3.0	13,626	11,001	7,682	6,076
2003-04	Gross cultivated area/hh	Cropping intensity	Workers/ha	Gross cultivated output/ha	Real profit /ha	GCO/worker	Real profit / worker
Small farmers, Mountain	0.94	1.77	3.4	12,342	10,003	4,383	3,557
Small farmers, Eastern hills	0.89	1.77	3.8	14,756	11,327	4,594	3,510
Small farmers, Western hills	0.93	1.73	3.4	11,162	9,415	3,959	3,338
Small farmers, Terai	1.00	1.89	3.3	15,534	11,546	6,015	4,330
Medium Farmers, Terai	2.58	1.88	2.0	13,405	9,885	10,676	7,072
Medium Farmers, Eastern Hills & Mountains	2.35	1.73	1.6	10,149	7,538	7,233	5,367
Medium Farmers, Western Hills & Mountains	2.29	1.75	1.4	7,452	6,395	6,000	5057
Large Farmers	5.90	1.78	1.0	9,518	7,427	14,306	10,172
All farmers	1.81	1.80	2.8	12,707	9,841	6,785	4,997

Source: CBS, 2006. GCO – Gross Cultivated Output

Considering the new evidence as described above, it is also important to make small farms viable by developing technology that increases the marginal returns or the productivity of labourers. If this can be done, the above argument does not hold strong policy recommendation for abandoning land distribution. Ultimately, the choice between large and smallholder farming systems is a question of politics as much as of economics. With the right kind of policy environment and availability of the appropriate services and infrastructure, small-scale farming systems can be at least as productive per hectare as large commercial farms, and also provide a decent living standard through assured access to local and global markets. The latter will depend not just on national policies but in large measure on the outcome of international trade negotiations such as WTO, and on the degree to which food aid will be decoupled from disposal of food surpluses. In any case, smallholders must have their property rights secured and protected.

5.5 Finding a modality of land reform: market-based or state-led land reform

The present debate in Nepal revolves around which modality to follow with regard to land reform. The radical land reform as proposed by a section of civil society with broadly 'left leaning' is to fix the land ceiling, acquire the excessive land, and distribute it to the landless and marginal farmers by the state. This can be done only by the state. In addition, other components of land reforms are also required. Another school of thought is that use of 'existing land market' can best result in land reform, increasing the access of poor and landless to land, and, at the same time reduce social tension between landed and the landless groups. Moreover, by adopting 'market-based approach,' various irregularities that we see in 'land distribution' approach like reselling of the land and not cultivating it properly will not be there. Only those who want to cultivate the land and work hard to make a profit and a living will obtain land through market mechanism. Moreover, through market, one can adopt policies to discourage ownership of large tracts of land³³. Therefore, there will be willing sellers and willing buyers, and this helps in a peaceful resolution of the problem. The value of land will also be reduced as there will be more land sellers once they are discouraged to have more land.

There are also other arguments in favour of market-based approach. They argue that as state-led radical land reform has become more like a utopia, as it has not been successful in most cases because of implementation barriers, it is better to have a market-based approach, which can be implemented.

Market-based approach has come to protect the privatization of land as property. The security to private property is one of the tenets of the capitalist market-driven approach. Therefore, many western scholars and donor agencies, the World Bank and International Monetary Fund encourage developing countries to give emphasis on the market-led land reform.

Considering the case of Nepal, it is important that it be decided by the stakeholders after careful analysis of the pros and cons of these two dominant models. It is also not that these models are mutually exclusives. Positive aspects of both can be identified and only those relevant to Nepal can be implemented. But, as discussed in the next chapter, land reform (or agrarian reform) are to be initiated and led by the state. Without state's involvement, it would be very difficult to implement the program and reduce or abolish the injustices done to various groups of people. However, it is useful to look into the experiences of other countries also.

There is also a shift in thinking about the land reform and ways to increase access to land. The experiences of different countries are useful to identify the possible solutions. There are different types of land rights and it is important that they all be studied, their relevancy examined and used in context specific way, where possible. A single solution or approach – be it market-led or state-led or soft-approach Vs radical approach – may not work in the present and diverse context. In African countries, land rights have been provided by protecting customary land rights and by providing mechanisms for their registration. In some cases, protecting (through registration) use or lease rights over state-owned land is also possible as these can also be registered. The land title holder can be individual, family, communities or the groups. This is not necessary that land titles be provided only to an individual. How far providing land title to the family, instead of a male household head or to a male alone, help to secure women's access to land? Will it reduce conflicts related to land? Do some special groups of people who directly depend on forest and land of particular type, for example Chepang and Raute, benefit by giving the land title to their traditional territory on a group basis? These are some of the pertinent questions related to land reform or providing access to land in Nepal. Further investigation is necessary in this direction also.

One should not be very negative on market mechanisms to improve access to land. An appropriate use of market-based mechanisms has a valuable role to play in changing the distribution of land. But it should be noticed that purchase markets are generally inaccessible to the poor, who cannot mobilize the necessary resources to purchase the land. The land price can also be high as landlords will charge more as they are not hard pressed in selling the land. In such cases, the state can subsidize

purchase. On the other hand, it can also adopt policy that encourages the landlords to sell the land at low costs. Therefore, different routes to land acquisition and combining elements of compulsion, incentives and free negotiation are important.

It is also argued that one of the reasons for the ownership of land is that it provides sustained and secure tenure over land, so that farmers can invest in increasing production and increase the productivity of land. But it is also widely recognized that secure tenure does not necessarily require individual land ownership. Security can be achieved with clearly defined and sufficiently long-term use rights over land that is ultimately state property, as in Vietnam and China. Community land rights can also provide adequate tenure security, provided that the group members enjoy clear rights over their plots; formalizing the land contracts by the state agencies can also be helpful. They may have informal or local validation over the land they cultivate, but legal backing from the government is also important. Because as land prices are increasing, the outsiders may create problems with regard to the legality of the tenure. In this case, both landowners and tenants are secure of their rights and it is important that tenants get more share of the production. Even though free choice principles may be applied in negotiation, tenants are under severe pressure to meet the livelihood and thus may enter into exploitative relationships with the landowners. Therefore, a norm should be developed so that tenants do not accept any condition under duress. The tenants should have very easy access to justice in case they have problems in the contract.

Experiences from other successful cases

1. Vietnam

It followed two distinctive approaches. The first approach was collectivization of land. It began in 1978, but was followed in 1981 by de-collectivization, which legalized renting of rice fields to members of the cooperatives. In 1988, traditional farmers were given the right to decide how to use their capital. The Land Law of 1993 allocated farmers land use rights, the area depending on right of use over the number of family members, for a period of 20 years for annual crops and 50 years for perennial crops. However, this right could be traded, transferred, rented or used as security. Plots were limited to 3 ha. The re-establishment of the family economy, following the land redistribution, had spectacular results. From being an importer of food each year, Vietnam has become one of the main world exporters of rice and food products.

2. Taiwan

The survivors of the communist party in mainland China, who escaped to Taiwan were helped by the USA in implementing the land reform programmes. They freed

the traditional farmers from the land-owning class. They reduced land rents. Then they sold the land to poor people. The land was confiscated from the defeated Japanese colonizers. Agrarian reform, which began in 1953, limited property to 2.9 ha and redistributed the surplus to small farmers, thus achieving a very egalitarian agrarian structure. After land reform, agricultural production increased by 5 times in 30 years period. The previous landowners were transferred to industrialists. They were encouraged to invest in industries from the compensation they received from land acquisition by the government.

5.6 Determining the land ceiling

There has also been a debate as to what should be the appropriate land ceiling at present. The land ceilings fixed in the past have already been discussed. But the present political context, especially after the Janaandolan II, has asked for a new ceiling. There are different norms, though they have come as verbal statements from different parties. Various parties, including the Communist Party of Nepal (Maoist), have not decided the norms yet. When one of the members of the Maoist dialogue team said that the land ceiling will be 10 bigha in the Terai, it gave great relief to many landlords because it is at par with the existing ceiling fixed by the Deuba Government in 2001. Once Land Reforms Minister, Prabhu Narayan Chaudhary, informally said that the maximum ceiling would be 2.5 bigha. This led to a panic among the landowners owning more than this land ceiling. This encouraged many families to divide the land and reduce the ownership. Many made it sure that their land size will not be greater than the ceiling fixed by the government. This happened in the past also. Even in 1964, when there was so much of surplus land, not much land was actually acquired because landowners divided and distributed the land to their own family members and relatives before the ceiling actually came into implementation.

Badal Commission, which had recommended the ceiling as 3 ha in Terai and inner Terai, 2 ha in the mid-hills, 4 ha in the Himal, 1 ha in Kathmandu valley, 0.5 ha in municipalities in Kathmandu valley and 1 ha in other municipalities, indicated that at the most they could get only 306 thousand rupees/ha in compensation. But considering the divisions of land among the adult family members and increase in population, when land is actually acquired by the state, the commission had expected that a substantial amount will already be divided and subdivided among the family members. Accordingly, the commission estimated that only about 100 thousand ha land will be available for distribution. It seems that land ceiling that the commission had fixed was very much based on the experience of Taiwan, Vietnam, Japan and South Korea, where land ceiling was fixed around 3 ha. I think this was not fixed based on the economic analysis of Nepal.

By 2006, there is tremendous increase in population. Even if land is distributed by 2 ha at the most³⁴ (as suggested by some political activists, it is calculated that there will not be a surplus of more than 1.5 lakh hectare. This is again based on the 2001 data. But now the population has increased and land has already been divided and distributed among the family members. This trend had already been growing since 2-3 years ago. Therefore, by the time it is actually implemented in the field, it will actually be difficult to get more than 50,000 ha land to re-distribute. Now this has to be divided among the 1.5 million landless households. This essentially means that one family will be getting 0.03 ha or 0.04 Bigha. This will not be more than a housing plot.

If the maximum land ceiling is just 2 ha, it can be argued that it leads to the survival of mainly the subsistence farming in the country and make the country a country of many small farmers. One of the most important aspects of land reform is to increase production. Increase in production will make the food grains cheap and enhance real wages of farm workers. There will also be increase in employment opportunities for the people. Land reform will help towards that. But making the farm size smaller in a way to give land to all may not help to augment production in a way it helps to fuel the economic growth and non-agricultural sector.

Given the above reality, a proper scientific study needs to be conducted as to the ceiling of the land and other aspects of land reform like whether to fix the minimum ceiling also, and in determining the viable land size for a family or an individual

5.7 Determining the viable size of land holding

Given that small farmers do not use the land very efficiently, because it does not give them full employment and income, it is also important to consider whether a minimum land holding that is required for a viable farm is required. The difficulties faced by small land holders in Nepal have already been discussed above. As they are selling land more frequently and given the chance to go for non-farm employment, they have left their land. The land of such families have been used less intensively.

The present or the proposed trend of land distribution in Nepal is more like a 'land for housing'. In essence, it may be called a 'housing right.' For example, giving 1 or 2 katha³⁵ or ropani of land is not helpful than having housing rights. Whether this is a real land reform needs to be discussed. There should be a rigorous discussion as to what could be viable land holding and what alternatives should be given for those who cannot benefit from it.

Nepal Living Standard Survey II and poverty trend analysis based on survey data has fixed the poverty line as Rs 7,696 per capita income for the country as a whole, but it varies from region to region. It is slightly lower in the Terai than in the hills. The poverty line income ranges from Rs 6,079 in the rural eastern Terai to Rs 8,909 to the rural western hills (CBS 2006). Considering the average of, say, Rs 8,000, a rural family, often comprising 6 members, should earn about Rs 48,000 to escape from poverty. As this data was based in 2003/04, now it can be safely assumed that Rs 50,000 is needed for a family in a year to escape from poverty.

A rough estimate of income from a hectare of land in Terai (Chitwan) shows that the main crop of paddy will give a gross income of about Rs 23,000 to 27,000 depending upon the land and irrigation facility. Considering that there will be another crop of equal value, a hectare land would give an income of Rs 46,000 to 54,000. Deducting the cost of inputs like fertilizers, seeds, insecticides and hired labourers, a farm household may not get more than Rs 35,000-40,000 from one hectare of land (excluding the cost of their own labour). This is on the assumption that no rent is needed to be paid or no interest is to be paid on the credit required for buying the land. Therefore, in a simple estimate, it can be said that 1 ha land is sufficient to make a family just to live around the poverty line. In various discussion programmes, farmers explain that 1 ha land will provide a basic livelihood if there is good irrigation facility.

In a recent discussion programme (August 2006) organized by Actionaid and CRSC, politicians involved in farmers organizations argued that minimum ceiling also needs to be fixed and this should be 7 ropani (0.35 ha) in the hills and 10 kattha (0.34 ha) in the Terai. If cultivated intensively, this can give subsistence, they argued. This can also be considered as a viable land holding, according to Anand Pokhrel, a Member of Parliament. He also categorized farmers into 'feudal', 'rich farmers', 'middle class farmers', 'marginal farmers' and 'agricultural labourers'. They further suggested: from feudal and rich farmers, the excess land should be confiscated; the land of those middle and poor farmers who do not depend on land, should be taken over by the government by paying a compensation for their land; the surplus land so obtained should be allocated or distributed to marginal farmers and agricultural labourers who totally depend on land. The other suggestions coming from the discussions were:

1. Absentee landlords should not be allowed to retain land
2. Land should be transferred to those cultivating the land or to the tenants, or to the Kamaiya, Kamalari, Haliya, Haruwa and Guthi-Mohi
3. The tenants of Guthi should also be given their rights and farmers cultivating Guthi land should be able to convert this to raikar land by buying it
4. Ukhada should be abolished and tenants should be given the land

5. Based on local survey, the tenants whose name was not registered should be registered now
6. Surplus land obtained from the land reform programme should be divided according to the following priority:
 - Kamaiya
 - Landless farmers and farm labourers, sukumbasi
 - Farmers with less than 0.1 ha land
 - Farmers with 0.2 ha land and having no off-farm income
 - Do not allocate more than 0.4 ha land to a family

5.8 Developing non-farm activities and guaranteed employment Vs access to land

From the above analysis it has become clear that farming alone cannot support all the rural population in the country. Also, given the fact that population is doubling every 27-30 years, land alone cannot support the population. Therefore, non-farm opportunities are essential to absorb growing population and poor and the marginalized people. This debate is not a recent one and the way the agricultural transformation is taking place in the world and industrial base has been developing, people must go out of the agricultural sector into non-farm employment. In Nepal also, non-farm sector is more remunerative than the farm sector. Therefore, a new concept of helping the private sector to grow and give employment to people is important. Urbanization is also important and it is seen that urban wages is one of the reasons for reducing poverty. In line with this fact, guaranteed employment for the poor and marginal farmers is a new policy option. It needs to be discussed whether distribution of small land holding to a Kamaiya which is just enough to build a hut and a kitchen garden is important or to provide him a guaranteed employment. The first approach will fix his location where they may not get non-farm employment opportunities at all. There is no ready solution on this, and it needs a political decision.

5.9 Protecting the rights of indigenous people and women

Various international human rights regulations protect the land rights of the indigenous peoples, even though there is no universal definition of this term³⁶. Indigenous lands often constitute quite extensive areas endowed with substantial bio-diversity, oil and

gas, mining, timber and other valuable resources. In Nepal, indigenous people's land has considerable biodiversity and they have also been protected in the name of national parks and conservation areas. The land of the indigenous people may not be held on an individual basis and they may have their own property rights system. Generally, they are held as common or community's properties. But by now, most indigenous communities also have private properties because of the influence of modern (often individualistic) system of property ownership and state intervention for maintaining this type of property-right regime.

In Nepal, there are 59 ethnic groups defined as indigenous peoples by the government. There is also a considerable mobility and mixing of some of the ethnic or indigenous groups. They also constitute a significant proportion of population (37%). There is also a wide range and priorities of different ethnic groups with regard to access to resources including land. Therefore, it also needs to be seriously debated. The situation of Chepang and Raute is different from that of other ethnic groups. They may need protection for their territory and resources. This debate is also relevant when the country is being restructured along the line of ethnicity and, at a time, when there is a debate on the right to self-determination for the indigenous groups.

Women's access to land is also an important issue because they at present own only about 10% of the land holding and about 5% of the cultivated area. This essentially means that land holdings by women are small in size. As there are cultural barriers for the women to have access to land, the state should have a firm policy and implementation procedure for awarding land rights to the women. Now there has been some improvement in the rules and regulations related to women's access to land. The judiciary system has given favourable verdicts so that women should not return the property they get after the marriage. But in practice, they have not been particularly favoured because of entrenched patriarchal social system and practices.

There is also a dissatisfaction expressed by Madhesi community (as expressed by their leaders) regarding land reform in Nepal. They argue that the government has taken their land away and distributed it mainly to Pahades (hill people). They consider land reform as a government's strategy to weaken their economic position in favour of 'hill' people. In the past, especially during the Panchayat period (1960-1990), hill people were settled along the Indian borders. And, from time to time, land has been distributed to squatters living there. These squatters are mainly the 'hill' people. To this argument, Keshav Badal, who once headed the high level commission on land reform in 1951, opines that land reform has benefited more the landless and small farmers of Tarai (or, of Madhesi community) than the 'hill' people³⁷. Moreover, it aims at redistribution of land owned by landlords, who are of 'hill' origin. Landlessness is more pervasive among the Tarai lower caste (Dalits) and they would mainly benefit from land distribution. This would also increase food production in Tarai.

5.10 Developing and improving the capacity of institutions and human resources for land reform programmes

Land reform is not successful in the countries where there is no political commitment. These policies generally need a favourable environment, which come after some revolution. The land reform in Japan, South Korea and Taiwan was initiated after a great change in political system. Janaandolan II has created a new and, perhaps, an apt environment in which the land reform policy can be developed and implemented in Nepal. Therefore, in a way, it is also urgent for land reform to happen now. After a while, it may not be possible to pressurize for this reform.

Implementation of 'land reform' is most difficult one. It is difficult to change the existing institution, and implementing the new land reform policy with this institution is also difficult. There may not be incentive for the people involved in the existing institutions for implementation of land reform. These institutions and people in decision-making may have vested interests not to implement the programme. Or, they may also not have skills and capacity for this. Therefore, capacity of the implementing agencies needs to be improved. Similarly, the capacity of civil society involved in land issues, farmers' associations, and political parties need to be improved for effective implementation of the policy. These may also be aware and responsible for monitoring of the progress.

Implementing a radical land reform is rather difficult as compared to other soft land reform. There is a likely resistant from the land owning class, which often comprises politicians, bureaucrats, educated people and who also wield economic and political power. They could bring in problems if they are antagonized. Therefore, the experience of implementing land reform in Taiwan may provide some lesson. Here the timing and speed of implementation was carefully done. Too haste implementation may raise suspicion from the land owning class and too slow may lead to total collapse of the programme. In Taiwan, a radical redistribution of land was carried out in harmony with agricultural policy. The key factors were the forced conversion of landowners into industrialists and a policy mechanism that did not give them any chance of interfering with the progress of the reform.

5.11 Local Vs foreign investment on land

The globalization and provisions of WTO mean that there are chances for foreign investors investing money to buy/rent land and natural resources and develop it for

their business. Recently, land has become an important sector for foreign investment, in agribusiness, forestry, tourism, and mining. Countries with such resources may lack the capital and technology to exploit them. Investors with the necessary capital and technology may be the solution. Investment by foreigners in land, forest or other natural resources may undermine the local needs of the communities for their survival. For example, they may pump out a lot of water and create environmental pollution. In fact this has been happening in many developing countries. For good or bad, this has not happened yet in Nepal. But some companies like Dabur have been investing their resources for increasing herb production. But just in India, foreign investment has come for different products like shrimp and cotton cultivation. Foreign investors, once they enter the country, can have many impacts. They develop links with the political system and can change the regulations or manipulate the regulation in their favour because they can take the service of best legal persons.

Foreign investment has not been attractive in Nepal because of the political conflict. But there is a concern from certain quarters, both domestic policy makers and donors, that there should be a conducive policy for foreign investors even in land. Now it is a high time to discuss about it and finalize the policy. From the experiences of other countries, it is seen that unless there is a mechanism to protect the livelihoods of people affected by foreign direct investment, this may create more harm than good.

5.12 Land reform for food sovereignty

The context of land reform has changed. The agricultural sector has been affected not only by domestic social, economic and political problems, but also by external factors. After the globalization, and particularly after becoming a member of the WTO in 2004, Nepal's agricultural sector has been, or will be, affected by international or external factors. It has already been explained in the first chapter that agricultural sector is now adversely affected by the growing control of multinational or corporate sector. Now the national boundaries can no longer put barriers to protect the domestic agriculture. The problem of cheap food coming into the market and the influence of a new culture to consume products of multinational companies is growing. On the other hand, production inputs like seeds, fertilizers, know-how and the like is increasingly controlled by MNCs. Considering this loss of control in agriculture, the concept of food sovereignty is growing. Therefore, now the focus should be not only on managing local problems in agriculture but also the external factors. This can be done if the land reform or agrarian reform can be done in the framework of 'food sovereignty' (see also IPC 2006). Food sovereignty includes:

- Giving priority to local food systems in meeting food security.
- Guaranteeing access of all types of farmers, including the landless people depending on land, to land, water, seeds, and credit. This requires genuine, comprehensive land reforms, for open access to seeds, and for safeguarding water as a public good to be equitably and sustainably distributed.
- The right of family farmers and peasants to produce food.
- The right of consumers to be able to decide on what they consume, and how and by whom it is produced.
- The right of countries to protect themselves from low priced agricultural and food imports.
- Agricultural prices must be linked to production costs with a profit margin required for a quality life and dignity of food producers. Countries should be entitled to impose taxes, quotas and bans on excessively cheap imports.
- The people should be able take part in the formulation of agricultural policies.
- The recognition of women farmers' rights, who play a major role in agricultural production and in food.
- The recognition of indigenous (like forest-dwellers or ecosystem people) people's rights to their resources.
- Abolishing all direct and indirect export supports.
- Phasing out domestic production subsidies that promote unsustainable agriculture.
- Developing local food economies based on local production and processing, and the development of local food outlets.
- Recognizing and enforcing communities' legal and customary rights to make decisions concerning their local, traditional resources, even where no legal rights have previously been allocated.
- Prohibit all forms of patenting of life or any of its components, and the appropriation of knowledge associated with food and agriculture through intellectual property rights regimes.
- And, protecting farmers', indigenous peoples' and local community rights over plant genetic resources and associated knowledge including farmers' rights to exchange and reproduce seeds.

5.13 Developing a feeling of security of property (land)

It has also to be reckoned with the fact that land reform has not been successful everywhere. We have the successful cases of Japan, South Korea and Taiwan. But

there are also equally unsuccessful cases. One of the common factors for making land reform producing good impact is the provision of security of land rights or the land as a property. If this security is not provided, or if there is a feeling that, land ownership is not secured, even those who obtain land from land reform programme will not use the land properly. This is what happened in Zimbabwe. The change in the government under Robert Mugabe was instrumental in transferring the landed property from 'whites' to 'blacks', who were denied their land rights. But a number of other activities and a way of transferring the land rights made people unsecure of their land, including the 'blacks' who obtained the land from government's land reform programme. The government did not follow any transparent process of getting the land from landlords. In many cases, it seemed like looting of the land. Secondly, where government confiscated large estates, it retained the previous policy of not dividing the estate. As a result, only a few could get the land. The lucky few to get those large estates were the 'black' army personnel and supporters of Mugabe's political party. These 'new' landlords are also not sure of the ownership of the land because there could be political change in future. They fear evicted from their land as they feel that they have also not acquired the land in a legitimate manner. As a result, they have destroyed the land and natural resources to reap maximum profit as far as possible. Now these estates are not productive and there is no interest in increasing production through proper management of soil, water and other natural resources. Government also distributed the public land to poorer 'blacks', but only those supporting the Mugabe's political party obtained this land. They are also not secure of their ownership. This lack of security on land is the main reason for less food production and growing hunger and famine in Zimbabwe, which once was 'food basket' for Africa.

The lack of security of ownership of land and its adverse impact on agricultural production was also seen in Cuba and China, but they gradually changed their policies to give a feeling of this security. In Cuba, government first confiscated the large farms of the landlords and managed it as state property (state co-operatives). This rather led to decline in production. Then the government broke up the large farms and gave ownership to individual farm families who were working on those large farms. Food production increased after implementation of this policy. In China also, there has been a policy shift towards family based ownership of farm. Firstly, after the political change in late 1940s, government followed a practice of 'state co-operative farm' where individuals did not have property rights. When production declined, government provided individual farms on contract basis. This policy also did not provide ownership right, but just the use right. This policy brought some positive impact at the initial phase. But, later on, farmers were not motivated to manage the resources properly because they did not really own the farm. Realising this, government then provided the farm families the ownership of land (farms) they cultivated. This has helped in increasing the production.

Nepal's land reform programmes should also consider this lesson from Zimbabwe, Cuba and China. Government and political parties should not speak in a way that people lose the feeling of security on the ownership of the land they own. Similarly, government needs to develop a legitimate way of taking back the land from the landlords. The present way of land confiscation that took place in Nepal in the last ten years will complicate the process of land and agrarian reform if it continues.

5.14 Tenurial security Vs land distribution in the context of high mobility

It is a well-known fact that every year about 250,000 Nepali youths go to Malaysia, Gulf States and other foreign countries for employment. Many more also go to India. Many of those who go to foreign countries for work (except India) have some land to cultivate. They are mainly from middle class and lower middle class. To some extent ownership of land is also helping them to go out as it helps them to get loan, from local moneylenders or from banks. This seems to have some implications for land reform programmes.

Because of foreign labour migration, a rapid change is taking place in land tenure practice and land use. Those middle class households who have members working in foreign countries or in urban areas within the countries have given a part or all lands (depending upon who are left behind in the villages) to others for cultivation. Therefore, land leasing practice is growing even in smaller holdings. The people who take part in migration have done so because of the need to diversify the household income. Previously, they were cultivating the land because of almost no opportunity cost of their labour. This might also happen to people who obtain land from government's land reform programme.

Given the fact that land holdings in general are decreasing in size (see earlier chapters), one would assume decline in land leasing practice. But, it has increased. Those cultivating other's land are the farmers who also have their own land, or in some cases, are landless farmers. The practice of converting slightly less productive land into grassland or plantation is also growing. But, all these farmers who lease out the land have a small size of holding and they will be within the 'land ceiling' however small it may be. Therefore, if the government comes with an idea that tenants would get a right on the land they cultivate, perhaps these landowners (who have less land in any case) would feign that they cultivate the land but would not invest on it. In this case, not only production would fall (as their number is extremely large), but also those tenants who have no opportunity cost will lose some access to land and food.

Therefore, there is a larger benefit to be obtained if tenants are secured of larger share on production (like 75 % of the produce of their land; and giving 25 % of the produce of the main crop to land owners) and security of land tenancy (like landlord cannot evict the tenants) rather than a right on the land they cultivate. In this situation, landowners (who are within the ceiling of land to be fixed by the government) may be willing to allow the tenants to cultivate the land or even invest on land because they are secure that their land ownership will be retained. There are a larger number of holdings in Nepal, who are in this category, and many people who have no other opportunities of income generation will benefit. These tenants may also get benefit from government's land distribution programme, but, in all likelihood, it will not be sufficient for them to find a full employment. Therefore, they will definitely want to cultivate more. It is because of this fact that 'mixed tenancy' is a common feature in Nepal. There are only about 2 % land holdings in the country, which is under 'pure tenancy'. The land reform programme in West Bengal in India benefitted many tenants not from land distribution, but from 'tenancy security'. This, however, does not mean that land distribution for sustained poverty reduction is not necessary. But it is just argued that as land distribution will not benefit many and will help, if any, to obtain only a small piece of land, beneficiaries of such programme will certainly want to cultivate more land. In this situation, if an environment in which landowner would lease the land is created, the landless and small farmers (including the beneficiaries of land reform programme) will get access to more land. These tenants then benefit more if terms and conditions of leasing are in their favour. These terms and conditions should not be fixed in a way that they will discourage the landowners to lease the land.

Endnotes

- 32 Bhattarai and Pokherel, 2004. A report submitted to Actionaid Nepal.
- 33 Increasing the taxes on land for large holdings will discourage land concentration and encourage selling of land at low price. As landlords having more land either have to pay high prices or sell it at lower price.
- 34 New land ceiling: New ceiling should be – 2 ha in Terai, 1.5 ha in the hills, 3 ha in Himali area, 0.5 ha (10 ropani) in Kathmandu valley, 0.25 ha (5 ropani) in Kathmandu/Bhaktapur/Lalitpur municipalities, 0.5 ha in other municipalities (Mulyankan, 143, Saun/Bhadra, 2063 BS). It is also argued that the land beyond ceiling should be nationalized and distributed to the poor and real tenants or cultivators through local agencies.
- 35 1 katha = 0.0339 ha, 1 ropani = 0.0509 ha.
- 36 Article 1 of the ILO Indigenous and Tribal Peoples Convention 1989 (Convention 169) states that it applies to peoples "who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who [...] retain some or all of their own social, economic, cultural and political institutions." Self-identification as indigenous or tribal is a "fundamental criterion." Convention 169 recognizes the "rights of ownership and possession" of indigenous peoples, and requires states to consult indigenous peoples on the allocation of licenses to exploit natural resources – timber and minerals – in indigenous lands.
- 37 Opinion expressed in an interaction programme organized by Nepal Institute of Development Studies, Actionaid and Community Self-Reliance Centre in Kathmandu in 21st February, 2007.

Chapter

6

Towards Agrarian Reform

As discussed in the preceding chapter, there are various contentious issues related to land reform. It is also argued that we need to move away from the concept of land reform because it generally connotes narrow meaning of distributing land only. Even though traditional policy makers who advocated 'land reform' argue that it also covers other aspects of agricultural production, the term agrarian reform is preferred nowadays. Therefore, the central argument of this paper is that we need to move away from the concept of 'land reform' to 'agrarian reform'.

Agrarian reform is understood not only as a policy for the distribution of land (land reform), but also as a more general process incorporating access to natural resources (land, water and forest or Jamin, Jal and Jangal), to finances, to technology, to goods and labour markets and in particular to the distribution of the political power. This not only implies thinking about land tenure systems (land tenure), but also about the functioning of the agrarian system as a whole (Barracclough, 2001). In addition agrarian reform also includes some additional provisions which the concept of 'land reform' generally overlooks. One of these is protecting the rights of native communities (indigenous peoples) and ecosystem people (who depend directly on natural resources and whose way of life is also shaped by the resources available in their vicinity) and regularization of their rights of use and of property rights of areas already occupied.

A contentious issue regarding agrarian reform is how to achieve this in the context of state restructuring that is being the main agenda of political change since 2006. The concept of agrarian reform is also useful to deal with land reform in the context of this new political restructuring. More about it has been discussed in the later section.

Nepal has undertaken a path of modern development since the 1950. In the plans and policies formulated since then, a major attempt has been to reduce poverty by increasing agricultural production. But in recent times, agricultural sector has received less priority than it deserves. For example, agricultural sector received only about 5 % of the total budget allocated in 2007. Despite these attempts, poverty did

not reduce until the early 2000. This reduction in poverty (31 % in 2003/04 from 42 % in 1995/96) has occurred because of injection of a large amount of remittances. Depending upon estimates, total remittances entering the country is about Rs 64 billion to 120 billion - about 15 % to 25 % of the GDP, which reaches directly to the household level. Whereas other developmental investments do not all trickle down to the household level, and thus have less poverty reducing impacts. Questions are also put as to the sustainable poverty reduction through these activities (like foreign labour migration), which are not under the control of Nepal. Therefore, it is important to make the domestic economy stronger to avoid the shocks of rapid reduction of external income sources, which might be a case in future. Therefore, sustained poverty reduction and improved agricultural production are also necessary. For this agrarian reform play an important role. It can be argued that as Nepal did not have an effective land reform its efforts to increase agricultural productivity and production largely failed. The per capita out production in Nepal has gradually been reducing. Now, the country can only produce only about 81 % of its total food required. Agrarian reform, including consolidation of fragmented land, is considered basic to successful green revolution program, even though one can argue whether this program in itself is a better one. In areas where green revolution was imposed without agrarian reform, it has either failed or led to extreme inequality causing social problems. In such situation the 'green revolution' will first be green, and then this will soon turn red.

6.1 The principal aims of agrarian reform

The above concept of agrarian reform is also relevant in the context of Nepal. This is so from the following perspectives:

1. Providing social and political justice: Agrarian reform is also necessary for 'social justice'. It concerns the need for equitable distribution of wealth, a fair labour remuneration, fight against unemployment, and social protection measures (Vazquez 1986: 661). Equity in distribution of wealth does not mean standardization of lifestyles, i.e., making the style of living of all the same, but rather to a situation in which members of a society broadly satisfy their requirements in food, clothing, dwelling, and access to education, leisure and a minimum of cultural goods (Furtado, 1992: 6). Sen's (1999) concept of 'freedom as development' can also be achieved through agrarian reform. The agrarian reform increases the decision-making power of the hitherto neglected masses like landless farm workers and marginal farmers. Lack of ownership of land for these people was making them subservient to other people. Various forms of bonded labourers (in Nepal's cases variants of bonded labourers could be Kamaiya, Haliya and Charuwas, Balighare, Kamlaris) emerge from this lack of ownership of land.

Studies have shown that 'freedom' of the erstwhile landless labourers has increased after getting benefits from agrarian reform. This increased freedom is the principal end and the principal means of development (Sen 1999). He has seen development as elimination of deprivations of liberty that limit people's choices and opportunities to exercise in a balanced way to improve their condition as an agent. This is true not only in the case of freed Kamaiyas in Nepal, but also in various countries like Brazil (Heredia et al., 2005), South African (Bernstein, 2004) or Bolivia (Kay and Urioste, 2005). Generally the asset (i.e., the land in this case or the house) and the skills they get from the program enhance their ability to make choice. This enables them to transform themselves from passive subjects to new social actors. Here, these assets and rights to them are what Sen (1999) argues as the instrumental dimension of freedom. The agrarian reform is necessary for this to happen.

The agrarian reform encompassing the land distribution acts directly on the promotion of social justice (De Janvry and Sadoulet, 2002; as quoted in Leite, 2006). They argue that this happens from the following factors: a) land becomes an effective instrument to accumulate wealth and to transfer this wealth to the next generation; b) land can become a guarantee to access credit; c) land ownership is a source of personal and social security at the time of old age (land can be sold, rented or mortgaged to face crises or changes during life); d) land ownership ensures the continuity of access to the same plot (offering the possibility of capitalization of long-term investments) and a source of local social capital; e) land ownership confers a social status and negotiating power.

Food security is now considered as basic human rights. Nepal's Interim Constitution (2007) has also recognized this right. When a country accepts the fact that 'food security' is a basic human right, its government or the state has the responsibility to respect, protect and fulfil this right. Agrarian reform is necessary to improve the food security of the people. The beneficiary families of the agrarian reform are more secure in food than when they were not the beneficiary (Carter, 2003). Even when agrarian reform does not increase the monetary benefits (some argue that small holdings may mean less income as discussed in preceding chapter), it helps in food security because it helps in improving the food self-sufficiency. When the markets are imperfect and there is uncertainty in the supply and price of food, food self-sufficiency is more important. It protects the small farmers from the vagaries of the market. Taking the case of recent food crisis owing to food price rise, Nepal did not witness the problem that was observed in many other countries in Asia and Africa. Even the price rise in Nepal was slightly lower than the international level. The reason for this relatively favourable situation is that many families in Nepal still get some food from their land. They could use this food during the times of crisis. Therefore, the panic situation is not seen. Accordingly, this demonstrates that access to land through agrarian reform is necessary.

Agrarian program that insist on free distribution of land to the people who were historically denied from access (and ownership) to land and whose land were confiscated through various means is socially justifiable. Accordingly, the 'market-based' approach of World Bank (like land bank) has been criticized because in this program even those who were historically disposed by the state or through unscrupulous means should not be forced to buy the land and re-establish. The case of Tharus in Chitawan is a clear example of this historical injustice, because they were the ones living in Terai in the past when other peoples from hills and India had not arrived. Many of these Tharus are now landless and are accepting the bonded and semi-bonded labour relationship with landlords who came to their land only about fifty to hundred years ago. It would be an injustice to these Tharus to force them to buy the land through 'land bank' or other similar market-based agrarian reform program.

Considering the fact that the main way to get access (i.e., ownership) to land is inheritance, the social injustice made in the past is just get transmitted if some radical changes are not brought. Moreover, the history of land system in Nepal clearly reveals that it was the state (or the government) who gave land to the elites involved in army and bureaucracy and to those who provided support to the rulers. Now their progenies control much of the land in the country although it is also a fact that their holdings have also become smaller and smaller because of divisions and selling. This historical process of land distribution has already been covered. Even in recent times, about 81 % of access to land has been obtained through inheritance (CBS et al, 2006). The access to land through buying is very small. Therefore, in order to reduce this injustice, one effective land reform is necessary. It would have been much better if the land reform program of 1964 had been a success, because at that time there was plenty of land for distribution, which would have pulled many more households out of poverty.

2. Improving the productivity of land: Nepal, as discussed previously, is also a land scarce country and per capita land availability is already low (0.18 ha per person) and most people still depend on land as a primary source of livelihood. There is also less scope to expand the land. In the hills and mountains, availability of land for cultivation is low. Owing to fragile ecosystem, it is also important that a large area of land (about 50-60 %) should be left under forest. Only this way, the rate of erosion and landslides can be reduced. In Terai also, there is already rapid rate of deforestation, and not much scope exist to expand land at the cost of forest without disturbing the ecosystem. The further deforestation would make the Terai land less productive because of lack of humus (organic matter) from the forest. In the past, Terai forest was very productive because of large amount of 'humus' supplied from forest to the land. But this process has already been reduced to a larger scale. The deforestation in the present time has taken place not only because of land encroachment from squatters, but also from

cadres of political parties to generate resources to finance the elections. The rate of deforestation was highest at the time of election of constituent assembly. As there is less land for distribution, which essentially means that beneficiaries of such distribution program will have small land holding. For them to be secure in food production and other basic necessities, they need to have higher productivity in their land. Therefore, other supports like access to finance, technology, markets and the like is necessary.

3. Preserving the environment: Agrarian reform is also necessary for the preservation of environment. In areas where people have put their labour in constructing the terraces and preserving the forest, erosion rate is lowest. For example, the rate of erosion in terraced land in the hill slopes is about 8 tonnes (of soil) per hectare. In open grazing areas, it can be as much as 25 tonnes/ha and gully land it can be as much as 570 tonnes per hectare (ADB and ICIMOD, 2006). Therefore, agrarian reform which also aimed at protecting the land should be in place. This protection comes when there is tenure security and other incentives. For example, land degradation and soil erosion in Churia range is very severe, which is also having negative consequences in Terai's land and agricultural productivity. In Churia range, erosion rate could reach up to 250 tonnes per hectare in degraded forest. Therefore, preservation of forest and land through soil conservation methods is necessary. In central Terai Churia range, the problem is that long settlers have not got the titles to the land they have been cultivating since a long time ago. They have been allowed to cultivate the land. They also have no where to move. But they do not have rights on the land they are cultivating. In this sense, they have no incentive to manage the land properly and to introduce land conservation measures. It is also because of this reason that land degradation is highest in already a fragile physiography of Churia hills.

In general family farms, i.e., which a farm owned (with full legal and social rights) by a family and operated by it, are considered better in conserving the land resources. As they become the actual owners without fear of losing their land, they would invest in land protection measures as they **consider land a resource** not only for them but also for their children. Agrarian reform, which aims to provide more land in the form of family farms, will certainly have good impact on the conservation of land resources.

4. Protecting the rights of women and indigenous peoples: Agrarian reform is also necessary to protect the interest of women and indigenous peoples whose way of life is directly based on natural resources. The concept of 'agrarian reform' also covers this aspect. Nepal has already ratified ILO Convention 169 in 2007. Because of this convention also, Nepal should respect the rights of indigenous peoples in deciding the activities that interfere with their natural resource base. Moreover, in many areas, government should also respect and **protect** the rights of indigenous populations to continue their traditional occupations that forms the backbone to their subsistence living. Therefore, any activities

that distort the subsistence living of indigenous peoples should be avoided or decision making power on these activities should be given to these peoples. Similarly, there is also a need to increase the ownership of land by women. Even though the present constitution (Interim Constitution 2007) provides equal rights to sons and daughters to their parental property, a lot has to be done in terms of developing new laws and regulations. Moreover, it has to come to the practice in the society. This requires mechanisms that provide incentives to families to provide ownership of land to women, a mechanism of providing easy access to justice for women who do not get their rights.

5. Securing the tenure of property: Agrarian reform is also necessary to give to land owners, both old and new, a feeling that their property, including the land, is secure. This is also social justice. Without providing a security to property, it would be unthinkable to bring agricultural development and improve the economic and social condition of even the beneficiaries of the agrarian reform program. By correcting the historical injustices and providing social justice to landless farm workers, a right condition for security of tenure prevails. In this situation, government can also enforce the property rights legislation which would also create an for environment for investment on land and farming.

6.2 Priority aims in agrarian reform

The above section dealt with the need for agrarian reform and its various aspects, i.e. its importance for productivity, environment and social and political justice. The question of women, indigenous peoples, food security and the like come under social and political justice. In a way, various aspects of agrarian reform can be shown in the following diagram.

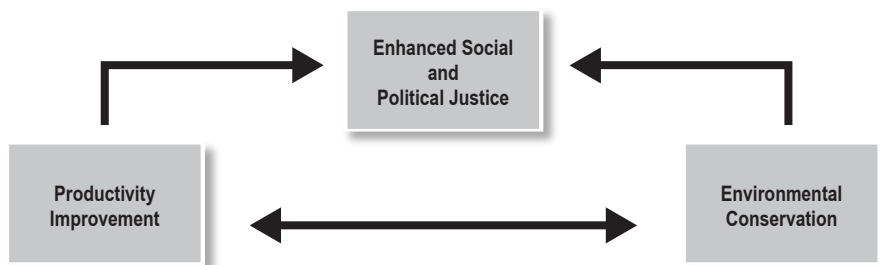


Fig. 6.1. Aims of agrarian reform

The question that generally arises is which of the aims of agrarian reform is more important. The general tendency is to give more weight on 'productivity improvement' and increase in total agricultural production. 'Environmental conservation' is considered as another aim. Combining these two aims would lead to what is called 'sustainable development'. But sometimes, environmentalists would put 'environmental conservation' as the first aim of agrarian reform. In whatever way, it is again the 'sustainable development' that is emphasized. The concept of sustainable development, in itself, is a vague term and policy makers use this vagueness to define it in their own way. Accordingly, it has become a popular concept. But it is argued here that social and political justice should be the first goal of agrarian reform. This goal should not be compromised with other goals. Then only the historical injustices done to people and protecting their human rights including right to food security and right to housing is possible. Otherwise, this aim gets diluted if priorities for improving the agricultural productivity and environmental conservation are given in agrarian reform. It also needs to be reckoned with the fact that these aims are interrelated, i.e., they reinforce each other. But, the feeling of social and political justice, including security of property rights and equity in distribution of resources, has more positive impacts on conservation of the environment and improvement in productivity.

6.3 Stakeholders in agrarian reform: Their roles, responsibilities and strategies

6.3.1 State

State has a major role in agrarian reform. The distribution of land and securing tenancy rights, technological underpinning and credit and market support implies that state has a major role in this reform. State should not leave this reform just to market if it wants effective agrarian reform. Only market driven agrarian reform cannot provide justice to the historically deprived peoples and bring equity in distribution of sources for greater social justice and for better productivity. But certain aspects of agrarian reform could also be left to the market under the supervision and monitoring of the state. It all depends on the context in which agrarian reform is done. But state should assume the lead role in this respect. Very broadly, state has the following tasks to be performed with regard to agrarian reform.

1. Constitutional guarantee and formulating regulations for agrarian reform and its implementation: At this juncture of the Nepal's history, there is a good opportunity to put 'agrarian reform' in the constitution to be developed by the

Constituent Assembly. As the constitution of a country is a supreme law, it would help, or make it obligatory, to formulate other laws and regulations for its implementation. Therefore, state should take measures to put this agenda in the constitution and formulate policies for an effective implementation. Moreover, there are about 65 laws in Nepal which deal with one or other aspect related to land. There are also contradictions among these laws. Moreover, power for a certain tasks are scattered among different agencies. For example, different agencies (District Administrative Office, District Development Committee, Village Development Committee and Land Revenue Office) are given responsibility to prevent encroachment of public land. But no one takes this issue seriously because everyone looks to another for this task, which generally invites problems for the person taking the action. As a result, this has become no one's responsibility. Most of these laws (and Acts) do not support the agrarian reform agenda. Accordingly, attempts have to be made to formulate a comprehensive law that deals with land issue so that ambiguities, duplicity and redundancy are avoided. The existing laws related to land need to be reviewed and weaknesses are to be identified. Then a single comprehensive land law is to be developed. The success of land (agrarian) reform depends on progressive land policies as guaranteed by the constitutional provision of land reform. This was the case in West Bengal, India.

2. Developing national consensus: As agrarian reform has various actors and stakeholders, it is important that national consensus is developed. In this perspective, government is to initiate a dialogue with the rightsholders of the land as well as the land-owners. It should be able to identify the landowners who have acquired the land through unfair means or state grants (as discussed in the initial chapters). The government could take these lands back even without paying the compensation. A broad consensus about the modalities of agrarian reform, especially on how to acquire land, is important. This would help in the proper and smooth implementation of agrarian reform programs.

There are also prospects that this 'national consensus' can be achieved. In Bolivia this was achieved and reform program has been moving smoothly. There are landowners who want to move out of farming. These owners are generally eager to give up the land under some suitable arrangement. As farming has been a difficult profession, the new generation of landlord families are slowly giving up the land for urban-based jobs. They are also highly educated and do not want to return back to the land as they are engaged in lucrative jobs in other sectors and in foreign countries. Therefore, there is a possibility that national consensus can be reached. From the experience of non-governmental organizations it is seen that some landowners are willing to give land if there is social and political pressures. However, it also does not mean

agrarian reform can be done in a completely conflict free environment because all landowners may not be in favour of reform program. Therefore, government should also be ready to deal with possible conflicts in the implementation of the reform program, and should develop a capacity to manage this situation.

3. Distributing land and reducing fragmentation: There is also an argument that distributing land or changing the ownership from social justice point of view might create a situation that leads to rapid and large scale fragmentation of land. The land holdings in Nepal are already fragmented giving a problem for its utilization. Nepal's case is a situation where already a small land holding (on average, of 0.7 ha) is divided into 7 or 8 pieces which are scattered around. The new provisions like equal rights to parental property (i.e., mainly land) for daughters also is argued to increase land fragmentation. But the problem of fragmentation is rather smaller one as compared to that of gender-based discriminations. Moreover, the fragmentation problem can also be solved through 'land consolidation' activities, which are also a part of agrarian reform. Therefore, first there should be land distribution and then the program of land consolidation. Government or the state is also responsible to bring in the program of land consolidation.

4. Decentralization and agrarian reform from below: Agrarian reform that the government implements should be implemented through effective decentralization, which means local bodies (like VDCs or DDCs), which are given the responsibilities to implement reform programs, should have decision-making power and adequate resources. Once these decentralized bodies have to depend on centre for the decision and resources, then there will not be effective decentralization.

Decentralization is necessary because local context related to land, production, infrastructures and agrarian relations is different from one place to place. Therefore, a universal (i.e., covering the whole country) norm may not be appropriate. For example, in area where land is of good quality and productivity is high, the land ceiling could be lower. Even the beneficiaries could be given less land as compared to the location where farming is difficult and land is unproductive. Only through decentralization, effective and just reform is possible. For this to happen, prior studies and discussions are also necessary.

5. Financing for agrarian reform: The most difficult problem related to agrarian reform is to generate adequate resources for its implementation. In general this requires a huge investment on the part of government. Many a times it is also seen that government makes various compromises on agrarian reform to generate resources for its implementation. As the states, which need to implement an agrarian program, are also poor, they try to solicit fundings from donor agencies or aid

agencies, which could impose their own conditions, and dilute the agenda of the state. Therefore, government is to be careful in taking the financial assistance in this respect. It surely needs to take the financial assistance, but without compromising its aims and modalities of implementation. The general practice of the donors is to leave the agrarian program to the market or implement it through soft policies. But in a place, where injustice is deeply rooted and some reforms are urgently required, this soft approach may not solve the problem and satisfy the people. But all soft approaches cannot just be discarded. Those soft policies which have good impacts could be retained and continued. For example, the experimental policy in Nepal for a provision of a tax subsidy in the registration of land if it is in the name of women or marginalized communities is having a good impact (see the preceding chapters). If this is continued for some time, it will surely increase the land ownership in the targeted groups' name.

High financial requirements for agrarian reform come from the fact that government will have to pay the compensation to the landlords for taking up their land that is above the ceiling. This compensation is to be given only to those who have acquired the land through their hard work or enterprise. For others, government may just confiscate the land above the ceiling. The surplus land that the government takes back should be distributed freely to the genuine farm labourers who are landless or to marginal farmers. But generally the problem happens in the distribution of land. Usually, it does not go to the right people. Therefore, proper care needs to be taken to make sure that the land that the government distributes goes to the right persons or families.

6. Technology promotion, credit and market support: Adequate research and innovation activities are required to develop technologies that are suitable to the agro-climatic condition and under the control of farmers. Then only the productivity and production of farmers could be increased on a sustained basis. The technology which is not under the control of farmers may not be suitable because it may increase the dependence of farmers to the technology-generating or knowledge producing agencies. If these agencies are private and have monopoly, then farmers could be in problem at any time. The present dependence on seeds (improved or high yielding and the like) coming from big companies has already created problem for the farmers. The profit motivated companies may increase the price of seeds when they realize that farmers are totally dependent on them. The syndicate system and monopoly of big companies will create a situation in which they have the capacity to control the market also. The committing of suicides by farmers in India about two years ago had happened exactly because of this process (see the first chapter).

Credit and market supports are also equally important in agrarian reform. Farmers need to have easy access to cheap credit and markets for their products. If there is no market for their products, there should be a policy of support price system, i.e., government should buy the products at some minimum price. Similarly, easy availability of inputs in the market is also necessary.

Apart from these supports, government should also make it certain that farmers are not adversely affected by dumping of cheap agricultural products from other countries. Accordingly, anti-dumping measures are also necessary. Strong farmers' organizations are also necessary for this to happen.

The agricultural development policies (apart from land distribution) that the government needs to formulate has three main pillars (technology, organizations of farmers, and other supports mentioned above). If these are provided, agricultural production would increase on a sustained manner, and there will be production of food that is healthy and safe. The agro-ecological system will also be preserved. This is a general model developed in Cuba after the general failure of collectivization of farms under state ownership. This transfer of estates from private landlords to state and its use through huge co-operatives did not produce a good result. The state distributed the land to families for family farms with tenure security, and then promoted the three pillars of agricultural development as discussed above. This policy improved significantly the production of food. This model is illustrated as follows (ICCARD, 2006:13)

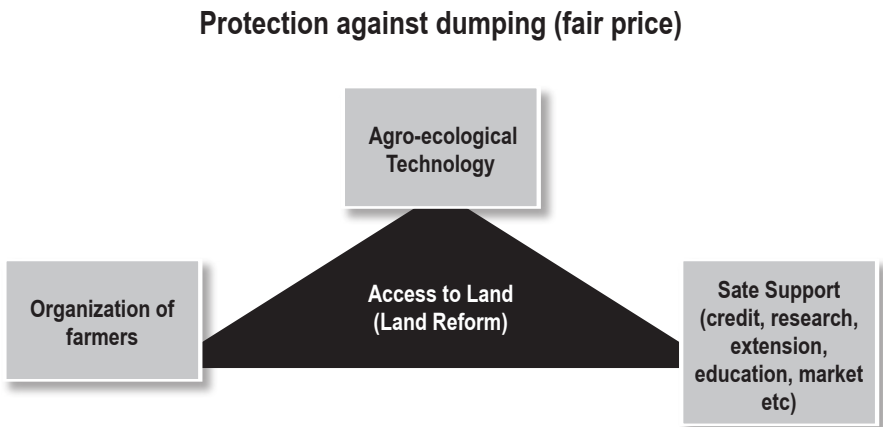


Fig. 6.2.: Basic aspects of agrarian reform

7. Strengthening land administrative capacity: It is a well known fact that to implement an agrarian reform program in a successful way, a capable land administration is necessary. One of the reasons for the failure of 1964 'land reform' movement was the weak land administrative and poor land information. The information then existed was utterly inaccurate. The government could not provide effective land related services also. At present, land bureaucracy is most inefficient and cumbersome. The land recording and information system is not accurate. People do not get guarantee of the ownership of their property. The land records are poor and paper-based. The storage of records is very poor. Therefore, one may lose the evidence of the ownership also.

In Nepal, land management is very traditional, which was developed with a view to extract land revenue. It was not geared for land development, management and increase in production. This past legacy is still inherited by the land bureaucracy. Despite the existence of this bureaucracy, it has not been able to protect the property (land) rights of the individual. Moreover, land administration is highly centralized. Even though the Ministry, which deals with land (the Ministry of Land Reform and Management), has office in all districts, it has not given power related to land reform to its district offices. Poor people usually cannot deal with land issues in offices and courts as the procedure is complex, which makes the corruption a usual way to get the things done. This calls for the urgency of simplifying and decentralising land administration. A modality on how to decentralize the administrative power to local government bodies and strengthen their capacity to deal with these issues needs to be developed, and then implemented.

Government has been providing 'land services' from different offices and there are duplications in the work. Moreover, a client (citizen) has to visit different offices for his work. If all the land related tasks are to be brought under a single roof and under a single authority, a client will get a service from one window. This calls for a restructuring of the government institutions dealing with the land.

The present government institutions related to land are also not able to provide services because of the lack of resources. It is a well known fact that these offices raise a significant amount of revenue for the government, but they lack resources even for simple tasks like maintaining records and for simple repair of wear and tear in the office. This has also been hampering the land reform efforts. For example, they have to publish the notices in newspapers regarding the clearance of tenancy rights. Sometimes, the task is delayed simply because there is no money for this task. The revenue these offices raise all goes to government or local government unit

(like District Development Committee). There should also be a provision of keeping a share of the revenue raised for the improvement in administrative capacity of the land related offices itself and for land improvement activities.

It is also necessary to establish a high level 'land authority'. As there are various unsolved and controversial issues regarding land, a high level 'land authority' is needed to be established. The controversial issues include information about the real rightsholders, availability of land, extent of public (Guthi) land, resettlement problem and the like. The sub-offices of the high level authority will also operate at the local government bodies and they will be responsible for solving the local problems.

8. Developing accurate land related information: Information on land ownership status, location of the land plots, tenants, if any, and the like should be accurate and easily available. At present, these information are not accurate. As a result, there is a great deal of controversy and conflict. Owners are not secured of their land properties. Proper planning cannot be done in this situation. Therefore, land information system needs to be developed and wider discussions are necessary to devise such a system.

9. Protecting public land: Public land is important, especially for poor people. If there is public land, possibilities exist for public services and even for land redistribution programs. Public lands are increasingly encroached upon by 'land mafias', and unscrupulous peoples including corrupt officials. In developing countries, there is a growing trend of giving these lands to multinational companies. In Nepal's case, Guthi lands could also be considered as public property. But there is no clear record and maintenance of boundaries of these lands. They have long been encroached upon because of the unclear demarcations or boundaries. Therefore, government should be aware of these lands, and local government bodies should be made responsible for preserving and using these public lands. In many cases, these public lands could also be used to improve the access of poor people to land through certain contractual arrangements.

10. Developing resettlement programs: As agrarian reform also mean provision of basic services like health, education and utilities, it is necessary that sizable settlements are developed in locations where these services could be provided efficiently. Moreover, settlements so developed will also not occupy much of the productive land. At present, settlements, especially in the hills, are scattered and sometimes so small that it is economical to shift the settlement than to provide the basic services. Proper planning is required for this.

6.3.2 Civil society

Civil society has a big role to play in agrarian reform. But there are relatively a few civil societies that are involved in this area. The programs of most civil societies, especially NGOs, are driven according to donor's interests. Many of NGOs are interested in delivering services rather than organizing rightsholders for their basic human rights including land rights. In Nepali context, human rights organizations, which have become strong and wide spread now, have not taken this issue of access to land as a basic right. Accordingly, there is a need to involve more and more civil societies in land rights issue.

Civil society can do two main tasks related to agrarian reform or land rights. These could be 'mass sensitization' regarding the agrarian reform issues, and developing and strengthening the organizations of the rights holders. For example, they can help organize landless and other rightsholders for their rights, and they can also provide education and other supports for strengthening the capacity of these organizations. At present, there is an organization called National Land Right Forum, which has spread out to 42 districts. Working with such organizations, deepening them within the districts and expanding them in other districts is necessary. Civil societies are important for this task.

Civil society can also put pressure on the government to perform its roles and responsibilities as discussed above. It can also bridge the two institutions – government (state) and rightsholders organizations. For this regular interactions are necessary. The donor communities' support will be required for civil societies to organize these interactions.

Research on various issues related to agrarian reform is also important. As there is no single model of agrarian reform, the program should be devised to suit the local condition. The emphasis of such program should be that a large number of rightsholders should be benefitted rather than a few of them. Moreover, it is also likely that government may benefit only those who are its political supporters. Therefore, civil society has a role to conduct research, provide suggestion to the government regarding the appropriate modality of program, and help in its impartial implementation.

6.3.3 The rightsholders

Rightsholders (landless farm workers, tenants, marginal farmers, bonded and semi-bonded labourers, genuine squatters and the like) have a strong role to play by putting pressure on the government as well as supporting the government's action if it is related to agrarian reform. The only way rightsholders can put effective

pressure is by raising 'voice' through their organizations. At present, National Land Rights Forum is one of the emerging organizations of these rightsholders. It was established in 2004 with various objectives: ensuring tenants and landless farmer's ownership over the land tilled by them, to improve their access to land, food security and better health conditions, to protect security of tenure and to promote dignity and peace. This organization now operates in 42 districts. But it has not reached to all villages (VDCs). There are a number of interventions that are required to make these organizations effective. These could be:

- Expanding them to all districts of the country.
- Helping the government in the identification of real landless and marginal people who need to have access to land for cultivation if they are farmers or farm workers, or to housing rights if they are non-farm workers. This is especially so in urban areas, where many of the squatters are artificial squatters. Unless genuine squatters are not identified from artificial squatters, public and the government will be hesitant to take action.
- Improving the internal governance of these organizations.
- Improving the capacity of these organizations through trainings and workshops.
- Helping to develop leadership from them.
- Developing networks with related organizations.
- Developing networks with farmers' wings of various political parties.
- Improving the livelihoods of the rightsholders.
- Developing an alternative view regarding the agrarian reform and supporting government in devising a better reform program.

6.3.4 Media

The role of media is very important to dispel the myths about the agrarian reform and to convince the public that it will be equally beneficial for the wealthy landlords as well as landless farm workers. If media can spread this message of 'win-win' situation, there will be sympathy towards the program. At present, media programs on land are rare. Community Radio, other FMs and TV channels could be supported to develop 'programs' about agrarian reform. Similarly, journalists' associations could be assisted to organize interaction programs among journalists, specialists and the rightsholders. These journalists are to be encouraged to publish articles related to agrarian reform. Success stories are to be widely publicized through the media, which will also help in allaying the myths that the people and government have in general.

6.3.5 Political parties

As discussed in previous chapters, 'land' (as is described in the election manifestoes of 2008 'Constituent Assembly Election') reform has become a political issue, and all political parties agree on its necessity. But in terms of action, they all seemed to be not serious. Therefore, it is likely that 'land reform' is again will be put under a shadow after an initial euphoria. Therefore, political parties are to be pressurized to be active in developing the policies and implementing the program. Each political party has its farmers' wing and it has not been reached generally by the land rightsholders and civil society members for interaction and dialogue. There are also no programs to make the parties speak to public and media regarding their commitments to land reform agendas. Civil society **need to take** this initiative.

6.3.6 The donors

Donors in Nepal were generally not interested in agrarian reform program. Even at present they are just looking from outside to see how the demand for land rights unfolds from its rightsholders. Therefore, they have an attitude of 'wait and see' in this regard. Donors generally prefer market-based approach in agrarian reform programs. This is especially so in case of World Bank and ADB. World Bank in the past had supported land bank program, which was stopped after the political change in 2006. But as the pressure grew for 'land reform' and provisions were made for this in comprehensive peace treaty in 2006, donors' interest to study about this has been increasing. For example, ADB has now assisted Ministry of Land Reform and Management to develop a policy framework to strengthen the administrative capacity of this Ministry. But as the agrarian reform involves a large investment, donors' support is also crucial. Therefore, attempts have to be made to convince the donors that agrarian reform is necessary for sustained poverty reform. As poverty reduction is their main agenda now, they can be convinced to support agrarian reform by demonstrating its strong linkage with poverty reduction and in creating a peaceful environment conducive for private investment. From this perspective it is also important that donors are also involved in various discussions related to land. Government can make an attempt to develop a group of donors interested in land reform program and request them to convince other donors in government's agenda of agrarian reform.

6.4 State restructuring and agrarian reform programs

Nepal has already been declared as a federal republic. The federal structure will be developed and incorporated in the new constitution to be formulated by the Constituent Assembly. The question now been raised as to what will be the resource sharing

mechanism and access to resources when the country will be divided into federal state. How will it affect agrarian reform, especially land distribution? There is no uniformity in availability of land and natural resources and distribution of population. This essentially means that in some locations agrarian reform, especially land distribution, is less feasible and in some it will have some possibilities. If these locations happen to be in different states, then will the people of one state will have access to resources of another state. This is particularly so with regard to land in Terai. There is a general feeling that Terai's land has been distributed to hill people in order to dominate or marginalize the Madhesi people. Regional political parties that emerged in recent times in Terai, which are based on identity politics, are generally not interested in land distribution or land reform, but only in increasing agricultural production. On the other hand, in Terai (especially in eastern Terai), there are proportionately a large number of landless people. Most of these landless people are Terai Dalits. Because of caste-based discriminations, these Terai Dalits also get less wages as compared to high caste labourers. The economic condition of these Dalits is so precarious that they depend on landlords for their survival. They also cannot afford to go out of the village and make an independent living. As a result, they have become pawns of political leaders who adhere to identity politics and exploit these labourers. In a way, identity politics has been used to hide the class-based discriminations and in perpetuating unjust land relations. There is also a likely chance that these people are further exploited in a 'state' created based on identity politics.

Because of lack of clarity on how the state will be restructured, it is difficult to examine how this will affect agrarian programs. In such a situation, there should be regular interactions among the politicians, researchers and policy makers to discuss and design a federal structure that should not compromise with the possibility of an effective agrarian reform. The government is also likely to set up a 'high level commission' to design the federal structure of the country. The land activists and rightsholders need to develop a joint voice in a way that the proposed structure will not be detrimental in implementing an effective agrarian reform program.

Chapter

7

Conclusions and Recommendations

Land is still a valuable asset and main source of livelihoods for the majority of Nepalese. Its importance for the poorest of the poor is immense – for food security, for social and political life and stability in place. It is very important that land-dependent people and communities should have rights of ownership (or land rights) to the land they cultivate. There are twin goals in land reform – providing social justice to the poor and land-dependent communities and increasing the overall agricultural production on a sustainable basis.

Pressure on land is increasing in Nepal. The result is seen in the decline in the size of land holding and decline in the households owning more than five hectare land. The present land is also fragmented making it extremely difficult for farmers to make investment in land improvement and establishing infrastructure like tube wells. Despite small land holding, there is also urgent need to provide land rights to about 1.2 million land-dependent households who derive their subsistence from land-related work like tillers and farm labourers. The unjust and exploitative relationship between landlords and tenants or labourers should also be abolished. The problems of Kamaiya, Halia, Haruwa, Charuwa and Kamalari should be resolved with priority and as a matter of protection of 'human rights.'

Nepal has a right political environment to develop policies on land reform and implement them. Usually the poor and marginalized become vulnerable if any action is not taken at the opportune time to protect them. Once they lose out and shift to urban areas as squatters, then their rights on land can never be re-established. Therefore, it is a right time to argue for people friendly land reform policies that do not destroy the harmony in society and provide justice to the land-dependent communities.

There is an urgent need in Nepal of a land regulation that provides justice to hitherto overlooked people. The unregistered tenants, the bonded or semi-bonded labourers, farm workers, sukumbasi, women and indigenous people should have land rights,

i.e., right to own the land in which they work or have the guaranteed access to land for their livelihood.

There are several unresolved questions as to how to provide land rights, what is land right and who should have the land rights. These are discussed in Chapter 5. The various assumptions behind the policies and approaches and their relevancy in the changing context are also described in that chapter. Lack of clarity is also hampering the agricultural growth as investors, both local and international. Chapter 6 argues the fact that 'agrarian reform' is what is needed and several stakeholders need to contribute in different ways to make this a success. How different stakeholders can contribute, what could be their role and responsibilities and what strategies they should follow are discussed in that chapter. Therefore, this chapter provides a sort of guidelines for various actors including donor communities.

The present uncertainty surrounding the land ceiling and approach of acquiring land or modality of land reform is creating confusion among the farmers, especially the large landholders. They have already started fragmenting the land and making it small. This is not conducive for agricultural growth.

The debate about the land ceiling should be taken seriously and more debate and discussions are required. What are the criteria for land ceiling, whether it aims at making a farmer a full-time farmer dedicated to increasing the production and preserving the resources, whether to maintain a minimum farm size and what is the viable minimum farm size are pertinent questions. These are also discussed in detail in Chapter 5. As per the rumour, land ceiling proposed by different political parties and persons range from 2 ha (in general, for farming) to 10 ha. There is no discussion as to how these land ceilings have been proposed. Moreover, even by fixing 2 ha as land ceiling for farming, there is not going to be any significant amount of land left for distribution. It is estimated that this 2 ha is just enough to bring the farmer out of the poverty line. There is also problem in creating small farms – as they are the ones who have been selling the land more frequently and moving out of the farm. Even though it is said that small farms are more efficient, there is a growing realization that there is exploitation of labour behind this efficiency as farmers work even though their marginal return is less simply because they have to survive. This tendency is not going to improve the living conditions of farmers. Therefore, considering all these facts, discussion should be organized and a solution should be found out for the action.

There is a growing debate about which method or approach of land reform should be followed – radical land reform or the market-based soft approaches. There is no ready solution in this regard. It is also not necessary that practices to be followed should

belong to one approach. These approaches in a way are not mutually exclusive. Again, discussions and debates are essential among the stakeholders, both land-dependent communities and landlords, to find out the right solution that is suitable in a given environment. But, it is important that many options should be found out and a combination of suitable options need to be implemented.

Some of the lessons learned from land reform studies in Nepal and elsewhere are outlined below:

- Land reform requires strong political commitment on a sustained basis. Therefore, politicians need to be engaged in these issues. Advocacy is important. Organized advocacy by the alliances of both concerned groups and civil society is essential.
- Mainstream land access and land reform issues into the wider development agenda like PRSPs, Periodic Plans, MDGs, and other local initiatives.
- Re-assess mechanisms for land redistribution in the changing context. Participation of concerned groups in the discussion and policy-making is essential. Otherwise, this can also lead to conflict and blood-shedding. Based on the experiences of the past and requirement of the future, a range of tools needs to be identified that are appropriate for different groups to have access to land or have land rights paying more attention to the vulnerable land-dependent communities and groups. Decentralized and democratic land institutions and land information systems are essential for managing land distribution.
- Land distribution or access to land alone is not enough. There should also be overall support for agricultural production and marketing.
- There is a need to take external environment into consideration. Agricultural production has been affected more by external factors, especially after the WTO. In this context, the framework of food sovereignty needs to be taken into account for land reform. This framework provides answers to some pertinent questions related to WTO's AoA regulation, spread of bio-technology and increasing control of MNC on food chain, and foreign direct investment in land, and food security of people. This has been discussed in Chapter 5. Again there is no ready solution about it, but what is needed is the discussions and decision-making with participation of the concerned groups.
- Land is one of the assets or resources, but its use is linked with other resources like forest and water. Therefore land reform should also consider access or rights to other natural resources. To capture this aspect of land reform, the concept of 'agrarian reform' is useful. This is discussed in Chapter 6. This Chapter also outlines the roles and responsibilities of different actors in making the 'agrarian reform' a success.

- It is critical to build capacity of the institutions meant to implement land (agrarian) reform. The established institutions may not be effective because of lack of skills or due to vested interests in maintaining the status quo as administrators also come from the landed groups.
- Strengthen civil society groups concerned with land rights and improving the access to land and develop networks between people's organizations and these societies.

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Conversion Table

SN	Ropani	Kattha	Bigha	Acre	Hectare
Ropani	1.000	1.5023	0.0751	0.1257	0.0509
Kattha	0.6656	1.0000	0.05000	0.0837	0.0339
Bigha	13.3125	20.000	1.0000	1.6735	0.6773
Acre	7.9547	11.9506	0.5975	1.000	0.4047
Hectare	19.6564	29.5305	1.4765	2.4711	1.0000

1 hecate = 107640 sq ft or 10,000 sq m;

1 Acre = 43560 sq ft or 4046.87 sq m;

1 Bigha = 72900 sq ft or 6772.66 sq m;

1 Ropani = 5476 sq ft or 508.72 sq m

1 Kattha = 3645.00 sq ft or 338.63 sq m

1 Dhur = 182.25 sq ft or 16.93 sq m

1 Ana = 342.25 sq ft or 31.79 sq m

1 matomuri = 1369.00 sq ft or 127.18 sq m.

Annex

Agreement between the Farmers Organizations of Seven Political Parties for land reform in Nepal

Now the country is suffering from the regime of king Gyanendra and is at the crossroad for freedom. To oppose the King's September 11 and February 1 steps, which were undemocratic and unconstitutional, farmers' organizations were active. On the initiations of farmers themselves, they were mobilized to protest the king's move. During the movement, there was an agreement to develop a common platform among the farmers organizations regarding their agendas and, based on it, mobilize farmers for the protest. This co-operation continued to help in the organization of people and to conduct serious meetings among farmers' organizations to develop common demands.

The democratic movement will be successful only after the participation of farmers. In the absence of democratic governance, there is chance of solving the problems faced by farmers. Considering the forthcoming WTO ministerial meeting in 13-18 December, and the interest of the farmers within the country, different organizations of farmers in the country (All Nepal Farmers Association, Nepal Farmers Association, Nepal Farmers Association (Democratic), All Nepal Progressive Farmers Association, Nepal Progressive Farmers Association), commit themselves in the current political movement on the basis of the following demands. After the successful completion of the movement, the new people's government will – it is hoped – fulfil these demands of ours.

The present pertinent problems of the farmers:

1. Let us abolish absolute monarchy and establish full democracy through constituent assembly.
2. Declare ceasefire and broaden the way for sustainable peace.
3. Hold the peace talk soon and end the destructive war.

4. Stop the killings, crime, and violence, and create an environment where farmers can return to their village.
5. Implement radical land reform and end feudal ownership on land.
6. Register the tenants who have not been registered and protect the interest of the land tiller.
7. Provide land, which is sufficient to feed the family, to all landless, poor farmers, freed Kamaiyas and Sukumbasi farmers. Guarantee the social security for the farmers.
8. Establish a committee for land management and manage the land appropriately.
9. Develop a land use policy and arrange for the cultivation and production of suitable crops.
10. Convert all Guthi land to Raikar. Exempt the remaining taxes or rent. The present unjust practice of depositing the money in fixed fund while converting the private Guthi to Raikar should be abolished.
11. Implement land consolidation and fix the upper and lower limit of land holding for individual purpose.
12. Give priority for year round cultivation, and make sure land is not kept fallow.
13. Control the river, and distribute the land developed in river banks to the squatters.
14. Protect the public properties and heritage like public land, ponds, pati-pauwa, math and mandir (temples), masjid (mosque) and others. Punish strongly those who encroach upon these properties.
15. Develop agro-forestry and farming within the forest.
16. Implement nation-wide irrigation, stop the dry condition of land, maintain the existing canals, channels and local sources of water.
17. Organize agricultural co-operatives and make available the means of production.
18. Develop an emergency farmers' support fund, and protect those farmers who have been facing crisis.
19. Do not sign the anti-national and anti-people agreement in Hong-Kong ministerial meeting of WTO. Keep the agricultural sector out of WTO.
20. Protect bio-diversity and establish the right over intellectual property.
21. Provide subsidy for farming and do not be trapped in the nets of international financial institutions.
22. Construct agricultural roads and maintain the existing roads.

23. Maintain the profitable price of agricultural products and arrange the necessary market.
24. Protect the national market and take steps to find out international market.
25. Protect the Nepali products from foreign interference and motivate people for patriotic self-help.
26. Make available cheap and quality fertilizer, seed and other inputs. Punish the fertilizer mafia.
27. Establish organic manure factory in each district and make it available to farmers at cheap rate.
28. Mobilize technicians from veterinary and agricultural centers for the benefit of farmers. Make them available in remote and other places where there are no such human resources.
29. Update the farm wages and guarantee employment in formal and organized sector.
30. Provide ration-card for the poor people and make available the cheap goods from 'cheap outlets'.
31. Develop a 'farmers' regulation', provide legal services to the helpless farmers.
32. Establish farmers' court and guarantee the farmers rights.
33. Arrange 'insurance' of crops, and provide support to the farmers when they fail.
34. Increase investment in agriculture, provide loan at cheaper rates and end the compound interest rate.
35. Re-manage the loans of small farmers, do not auction their property.
36. Provide credit on group-guarantee basis for those who do not have collateral and arrange for paying interest in annual instalment.
37. Punish the corrupted and inform the farmers about it timely.
38. Implement rural electrification and develop cold storages. Provide subsidy in electricity for farmers.
39. Develop farmers' communication network and free telephone service for consultation with technician.
40. Run night schools for farmers, and organize agricultural development video programme.
41. Implement rural resettlement programmes and provide all facilities in such resettlement centres.

42. Implement anti-poverty programmes in rural areas and free the poor farmers from poverty.
43. Implement rural self-employment programme and end the unemployment.
44. Implement village health service programme and protect the public health.
45. Implement 'one family one employment' programme and end the unemployment programme.
46. Make the foreign employment easy and safe. Punish the corrupted recruitment agencies.
47. Implement rural youth empowerment programme and develop capable young human resources.
48. Implement women empowerment programme and enhance their independence.
49. Implement rural nutrition programmes for malnourished and protect the children's welfare.
50. Implement programmes for rural elderly. Respect the ancestors.
51. Give priority to agricultural industrialization. Make the country self-reliant.
52. Arrange for food security and end hunger related problems.
53. Establish agricultural university and prioritize the technical education.
54. Conduct research on farmers' needs, improve agricultural economy and arrange agricultural implements.
55. Also give citizenship on the basis of mother, respect the national feeling.
56. Arrange free educational tour for farmers and exchange of experiences among the farmers.
57. Meet the demand of specialist farmers involved in sugarcane production, poultry, foodgrains, fruits, vegetables, cardamom, milk, livestock, tea, coffee, ginger, tobacco, jute, bee, fish, flower and the like.
58. Implement integrated development projects in remote areas including Karnali zone, protect and develop animal husbandry and herb farming, and provide adequate opportunities for the people of remote areas.
59. Do not privatize the public institutions blindly; give priority to co-operative development rather than privatization.
60. Provide special programme for the welfare of farmers affected by flooding, landslides, drought and other natural disasters.

61. Conserve and protect the indigenous knowledge and skills of indigenous peoples, and recognize them as intellectual property.
62. Bring plans for the protection and development of minority indigenous groups like Raute, Kusunda, Ban Kariya, Hayu, Pahari and the like.

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ActionAid is an international anti-poverty agency working in over 50 countries, taking sides with poor and excluded people to end poverty and injustice. Founded in the United Kingdom in 1972 and registered as a global entity in The Hague, the Netherlands in September 2003, the ActionAid International Secretariat is based in Johannesburg, South Africa.

ActionAid is committed to improving the quality of life of the poor and excluded people so that they can live a life of dignity. It has over four hundred thousand supporters globally.

ActionAid has been working in Nepal since 1982. Its mission is to empower poor and excluded people to eradicate poverty and injustice. The work of ActionAid Nepal (AAN) over the years has undergone various changes as a result of its engagement at the community, national and international levels. Its scope of work has thus grown in content, coverage, commitment, and capacity to work in a multifarious situation over the period.

AAN changed its approach from direct service delivery to partnership mode with local NGOs in 1996. It adopted rights-based approach in 1998 with an aim to creating an environment in which poor and excluded people can exercise their rights, and address and overcome the causes and effects of poverty.

Currently, AAN's long-term partnership programmes at field level are being implemented mainly in 41 districts out of 75. Besides, AAN has some specific partnership projects and several short-term engagements with over 200 NGOs, CBOs, alliances, networks and forums across the country.

AAN's rights holders are the poorest and the most excluded people particularly landless poor (agricultural labourers and marginal farmers), Dalits, indigenous peoples, children, women, people living with HIV and AIDS, people with disabilities, victims of conflict and disasters, and urban poor (slum dwellers and informal sector workers). AAN has prioritised Education, Food Security and Women's Rights as the foundation themes. This apart, it is also engaged in issues such as Human Security and Governance that cut across our foundation themes. AAN considers right to health as an equally important component from the rights holders' perspective.

AAN works at the grassroots and national levels with various advocacy programmes in order to influence public policies and practices in favour of the poor and excluded people and to address their immediate conditions.

As a chapter of ActionAid International, AAN is also actively engaged in advocating at the regional and international levels on issues such as Women's Rights, Education, Food Rights, Human Security during Conflict and Emergencies, HIV and AIDS, and Just and Democratic Governance that cut across globally, to campaign for pro-poor policies and to enable the poor and excluded people to secure their rights.

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