Land Reform in Nepal
Where is it coming from and where is it going?

Liz Alden Wily
with
Devendra Chapagain & Shiva Sharma

The Findings of a Scoping Study on Land Reform for DFID Nepal

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The Authors

Liz Alden Wily (PhD) (lead author) is a political economist specialising in land tenure and reform. She has been based in Africa for several decades, contributing significantly to land and natural resource management reforms in ten countries. She has also worked in Pakistan, Indonesia and Afghanistan. Liz works as both policy adviser and practitioner, in recent years designing and technically advising land reform initiatives in Sudan, Liberia and Afghanistan. She was a member of the Property Working Group of the Global Commission for the Legal Empowerment of the Poor and is an Honorary Fellow of the Rights and Resources Initiative, a Washington-based global coalition of international organizations seeking to advance natural resource tenure, policy and pro-poor market reforms.

Shiva Sharma (PhD) is a development researcher, and is Executive Director of National Labour Academy-Nepal. His major contributions are in the fields of land and labour, and macro policy in Nepal. He was a Member of the High Level Land Reform Commission of Nepal Government in 1995; advisor to the National Planning Commission for 9th and 11th plan, and was Chairman of Informal Sector Services Center (INSEC) between 1999 and 2004.

Devendra Chapagain (PhD) is a natural resource economist with nearly 30 years of experience working in Nepal and abroad in areas of policy planning and evaluation. He specializes in socio-economic and institutional aspects of common property resources. He has led various professional teams for formulating national policies and plans including the Agriculture Perspective Plan (1995).

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Note

This study was originally prepared for DFID Nepal. However, its content and conclusions should in no way be taken as necessarily representative of DFID positions on any of the issues covered.
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OVERVIEW

This book reports upon a review of land reform in Nepal. It finds that state-led reformism is far from new in Nepal. Since the late 1950s governing administrations of all political hues have pronounced *land to the tiller* redistribution necessary to abolish feudalism and advance economic transformation. And yet they have as recurrently failed to achieve these objectives.

Although overlord powers of landlords and colonising agents have been successfully diminished, other destructive characteristics of feudal land relations continue to flourish. These include high levels of absentee landlordism, large areas of underutilised farmland, and failure to reform the conditions of those who farm others’ land, some of whom, extraordinarily, remain in debt peonage until today and despite repeated legislation against this. Insecurity of tenure afflicts the entire farming sector, a main cause of its stagnation. Farming has become one of the least appealing ways to survive and yet continues (and will of necessity continue) to underwrite the economy. This is itself truncated through failures to restructure farm tenure relations and force idle landlord capital into off-farm productive enterprise.

Breaking out of this cycle has become paramount to post-conflict and now republican New Nepal. Recommitment to abolition of feudalism through land reform has been given declamatory constitutional force. Reform is now termed *scientific land reform*, seemingly to reflect what is fast emerging as its dominant focus upon the commercialisation of agriculture.

While rhetorically, the link between redistribution with growth is retained, plans to actually carry out redistribution do not yet appear. Limitations on farm size or absentee landlordism are no longer mentioned and taxation (inducing sales to better-off farmers) is offered as the mechanism to reduce idle lands. The heat is to be taken out of popular demand for land by providing tiny plots of public wasteland to groups of the ultra-poor, and to those who have voted with their feet time and time again over the last 50 years and once again begun to occupy public lands in organized squatter camps.
This strategy has ominous echoes of former decades. It enables the State to avoid tackling the founding issues of unjustly acquired properties in the private sector and the rampant exploitation which continues to affect up to 2.8 million households who either have no shelter or farm of their own or not enough land to even subsist from – and while 7.5% of rural households still retain over a third of the cultivated land area, and a much greater proportion of the private property estate overall, significant parts of it idle.

It also enables the State to sidestep the increasingly pressing question as to how it has come to be the largest landholder in Nepal in the course of reforms, a situation at least partly engineered on the back of classical abolition of customary land rights in the name of modernization, and the co-option of naturally collectively owned assets like forests and pasturelands to its own purse and presumed superior guardianship. This has been a strategy upon which it has wisely but as yet highly partially back-tracked, in the form of handing over managerial control of mainly degraded forests to community bodies. In the process it has set up a new set of awkward institutional precedents which inhibit full restitution of property rights to either customary or modern community possession, and which trigger increasingly tense contestation over rights at the local level and especially between indigenous and non-indigenous communities.

This is however unlikely to be the end of the story. Although often un-crystallized in its vision, public demand for reform seems to heighten in this post-conflict period. This looks to real reform not just in the pivotal landlord-tenant relationship but in State-people relations, in terms of both power over property and the status of public lands. Meanwhile a High Level Commission is to be formed to produce concrete recommendations for land reform. A new Constitution is to be drafted in 2009 providing another opportunity for a fresh approach to property matters.

How far they will be able or enabled to take up the challenge of reforming reform remains to be seen. The risks of not doing so are high, with weary return to interventions of old likely, but with promises that this will work better this time on the basis of anticipated stronger political will. Indeed, lack of political will is identified by this study as historically the outstanding impediment to successful redistributive reform around the world. Nonetheless, too much reliance upon this is unreliable in a modern democratic state and within one which is so vibrantly Party-riven and where the age-old alliance of (often absentee) landlordism and officialdom appears to remain surprisingly intact. That is, sufficiently robust political will may be difficult to achieve now as in the past.
Democratising land reform itself offers a better chance of success, in the sense of looking to public will. This requires structuring reform as a people’s programme in which every village community is empowered to control its own land relations, within the parameters of broad national principles and more exacting inclusive process. This offers a more workable route out of the quagmire of broken promises, breakdown in the rule of land-related law, and a narrowness of objective and remedy than back to business as usual with some tinkering can achieve.

Correctly empowered communities will have a better chance of breaking the chains of the embedded landlord-State allegiances which limit change. With control over their own community land registers, they will be better able to ensure the long-term occupancy and rights of each household are registered and disputes around these more quickly resolved. A community based approach, working in an incremental manner, and on an area by area basis, will also be better able to tackle the rights and governance grievances which embrace much of the public land estate, including existing and future protected areas. Relieved of powers to manage land distribution itself and the opportunities for rent-seeking which afflict current systems, district authorities will be better able to neutrally facilitate delivery and monitor, with accountability systems firmly embedded in local populations, not upwards to central government.

Taking into account the experiences of innovative community based approach to land rights reform elsewhere, we do not find it too fanciful to envision a thriving future Nepal as a mosaic of some 4,000 or more collectively-governed community land areas embracing the entire rural landscape; and within which elected Community Land Boards govern not only private land holding but the regulation, use and management of collectively owned resources including pasturelands and protected forests and reserves, under the oversight of national or federal legislation and technical agencies.

How far emergent reformism can extend its vision and scope in such ways (and similarly embrace the equally pressing issues around rapid urban growth and speculative land hoarding and housing developments once again to the detriment of the poor, in especially peri-urban villages, not covered in this volume) remains to be seen. Ironically, intensive politicisation along party lines may yet serve to limit the level of community-driven empowerment needed to drive real change in this areas. In the interim, every assistance should be afforded the debate and policy-makers to maximise the current opportunity to genuinely move forward.
Glossary

Nepali terms relating to socio-economic and ethnic groups

Brahman/Chhetri high castes under the Indo-Aryan Hindu system
Janajatis ethnic communities or nationalities
Dalits former untouchables under the Indo-Aryan Hindu system
Madhesis dwellers on the Tarai, comprising 3 groups: Tarai Janajati groups, Tarai Hindu caste groups and Muslims

Land Area Measures
Kattha 20 kattha in one bigha
Bigha 0.67 ha, or 1.6 acres, or 8,100 sq yard, or 20 kattha
Hectare 1 hectare (ha) = 1.5 bigha, 30 kattha, 20 ropani
Ropani 1 ropani = 5,476 sq feet, or 0.05 ha or 4 muris
Muri 1,369 sq feet; 4 muris = 1 ropani

Feudal tenures and relations
Birta land grants made by the state to individuals usually on an inheritable and tax-exempt basis; abolished in 1959
Chhap-Birta a class of Birta made on a lifetime and taxable basis; abolished 1959
Chhut-Guthi Raj Guthi endowments administered by individuals, abolished 1972
Jagara Raikar land (state land) not assigned as Jagir
Jagir Raikar land assigned to government employees in lieu of salaries; abolished 1952
Jagirdar the beneficiary of Jagir
Jhara forced and unpaid labour due government, pre-dated Rakam
Jimidar an individual responsible for tax collection at village level in the Tarai
Jimidar the holding of a Jimidar
Jimmaawals village heads appointed during Rana regime to collect taxes from cultivators; usually large landlords
Land Reform in Nepal – Where is it coming from and where is it going?

Jirayat: a plot of taxable land attached to a Jimidari holding as part of the Jimidar’s salary cultivated with unpaid labour.

Kipat: customary land tenure system, including as recognised/granted by Ranas to an indigenous group, recognising its collective right to the land and right to practice its customary land system.

Mukhiya: appointed headmen and revenue collectors under the Rana regime.

Rakam: unpaid and compulsory labour services due government; abolished 1963.

Raikar: king’s land or state land.

Talukdar: a village level revenue collector in the hill region.

Tiruwa: a class of taxable Birta land mainly in the Tarai, abolished 1959.

Ukhada: a form of Jimidari landownership in only three districts in Tarai: Rupandehi, Kapilavastu and Nawalparasi; abolished 1964.

Current relevant terms:

Adhiya: sharecropping regime in which landowner or state takes half the produce as rent or tax.

Adibasi Janajati: Indigenous nationalities.

Amanat-Guthi: State religious endowments administered by District Revenue Offices or the Guthi Corporation.

Bandhak: Mortgage.

Bataliya: Sharecropping as in the western Tarai.

Bhumi: Land.

Bhumidari: Tenant’s cultivation right based on past use of that land.

Dalal: Land agent or facilitator.

Dasaundh: One tenth crop share.

Duniya-Guthi: Religious endowments founded and administered by private individuals.

Ghaderi: Homestead land.

Guthi: A land endowment made for a religious or philanthropic purpose.

Hali: Ploughman hired on an annual contract.

Haliya/Haruwa: System of hiring ploughmen (haliya in hills, haruwa in Tarai); usually bonded arrangements with ploughman working for free to pay off debts.

Jaggawal: Land owner.

Jan: Paid agricultural worker.

Jamindar: Landlord.

Jhora: Refers only to forest cleared and cultivated in Morang, Sunsari & Jhapa districts as referred to in Jhora Lands Act.

Kamaiya: Bonded labourer of Tharu origin in five mid-western Tarai districts.
<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
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<tbody>
<tr>
<td>Khangī guthi</td>
<td>Guthī land provided to priests and others for their personal upkeep; hired tenants</td>
</tr>
<tr>
<td>Khet</td>
<td>Irrigated hill land where rice may be grown; in the past given to officials</td>
</tr>
<tr>
<td>Kipat</td>
<td>Customary or communal land tenure system and rights</td>
</tr>
<tr>
<td>Kisan</td>
<td>Peasant</td>
</tr>
<tr>
<td>Kut</td>
<td>Rent in cash or kind paid by sharecropper/tenant to landlord or directly to State in past Raikar arrangements</td>
</tr>
<tr>
<td>Laguwa</td>
<td>Supervisor of farm workers</td>
</tr>
<tr>
<td>Madhesh</td>
<td>The Tarai plain or literally, midland (between hills and the Gangetic Plains)</td>
</tr>
<tr>
<td>Malpot</td>
<td>Land tax</td>
</tr>
<tr>
<td>Mahajani pratha</td>
<td>Money-lending</td>
</tr>
<tr>
<td>Mohi</td>
<td>Statutory tenant</td>
</tr>
<tr>
<td>Mohiyanī hak</td>
<td>Tenancy right</td>
</tr>
<tr>
<td>Munsi</td>
<td>Record keeper hired by landlords to maintain farm records</td>
</tr>
<tr>
<td>Pahad</td>
<td>The hill area of Nepal</td>
</tr>
<tr>
<td>Patta</td>
<td>A land allotment certificate in the Tarai</td>
</tr>
<tr>
<td>Raikar</td>
<td>Lands on which taxes are collected from individual landowners, traditionally regarded as state owned land, by 1964 recognised as private property</td>
</tr>
<tr>
<td>Raitani Guthi</td>
<td>Religious endowments owned by the cultivator-tenants</td>
</tr>
<tr>
<td>Raj Guthi</td>
<td>Religious endowments under the control of the Guthi Corporation</td>
</tr>
<tr>
<td>Serm</td>
<td>Cash tax paid on dry land</td>
</tr>
<tr>
<td>Sukumbasi</td>
<td>Landless</td>
</tr>
<tr>
<td>Tainathī Guthi</td>
<td>Religious endowments owned by Government but given to individuals to use</td>
</tr>
<tr>
<td>Ailani jagga</td>
<td>Public land</td>
</tr>
<tr>
<td>Raikar Jagga</td>
<td>Private land</td>
</tr>
<tr>
<td>Saamudayik Jagga</td>
<td>Community land</td>
</tr>
<tr>
<td>Sarkaari Jagga</td>
<td>Government land</td>
</tr>
<tr>
<td>Bataiya or Kut jagga</td>
<td>Rented or leased land</td>
</tr>
<tr>
<td>Maalpot</td>
<td>Land revenue</td>
</tr>
<tr>
<td>Maalpot Karyalaya</td>
<td>Land revenue office</td>
</tr>
<tr>
<td>Mohi</td>
<td>Statutory Tenant</td>
</tr>
<tr>
<td>Darṣaaval Mohi</td>
<td>Registered tenant</td>
</tr>
<tr>
<td>Raajinama</td>
<td>Title deed</td>
</tr>
<tr>
<td>Laal-purja</td>
<td>Title certificate</td>
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</tbody>
</table>
Acronyms Used

ADB  Asian Development Bank
ADBN Agricultural Development Bank Nepal
AEC  Agricultural Enterprise Centre
APP  Agriculture Perspective Plan
CBO  Community Based Organization
CBS  Central Bureau of Statistics
CFUG Community Forest Users Group
CPN (M) Communist Party of Nepal (Maoist)
CPN-UML Communist Party of Nepal (United Marxist Leninist)
CSRC Community Self Reliance Centre
DDC  District Development Committee
DFID Department for International Development (United Kingdom)
FAO  Food and Agriculture Organization (UN)
FECOFUN Federation of Community Forest Users Nepal
FWR  Far Western Region
GSEA Gender and Social Exclusion Assessment
ILO  International Labour Organization
INSEC Informal Sector Service Centre
MDG  Millennium Development Goals
MLD  Ministry of Local Development
MLRM Ministry of Land Reform and Management
NASC National Agricultural Sample Census
NC  Nepali Congress
NGO  Non Government Organization
NLSS Nepal Living Standards Survey
NPC  National Population Census
NRC  Norwegian Refugee Council
VDC  Village Development Committee
INTRODUCTION

New Nepal has pledged to undertake land reform, described in the Interim Constitution 2007 as ‘implementing a scientific land reform by doing away with feudal land ownership’.

In light of this the British Department for International Development (DFID) contracted the authors to contribute knowledge and information on land reform to enhance its understanding of the subject. A Scoping Study was the output, now presented in this volume. Local study was of brief duration, comprising in-country review during September 2008 through consultative discussion with officials, politicians, NGO representatives and activists in Kathmandu and with several hundred rural dwellers during visits to Morang, Banke, Dang and Rupandehi districts. Information on reform outside Nepal derives from the lead author’s own experience and review.

The brevity of study in Nepal imposes obvious constraints on the output and we are painfully aware that this book represents only a modest and incomplete beginning to the complex subject of land reform in Nepal. Additionally, without a great deal of local reference material to work with, it may contain inaccuracies. These are entirely our responsibility. Nonetheless it is hoped that the effort will contribute to positive public debate around the many challenges as to how best to move forward, to successfully remove the thorns of past injustices along with impediments to thriving agro-economic growth.

These simple questions drove our inquiry –
- What is land reform and why do it?
- What can be learned from global experiences?
- What is scientific land reform?
- What has been attempted in the past and with what results?
- Taking both local and international experiences into account, what shifts in strategy seem important today?
Presentation is in four chapters –

ONE: Land Reform in the Global Context with the aim of learning from other reforms. A compilation of further information is found in Annex A

TWO: Land Distribution in Nepal summarising facts about rural landholding today

THREE: Land Reform in Nepal reviewing initiatives up until 2006

FOUR: Looking Forward examining the new post-conflict agenda (‘scientific reform’) and observing challenges, risks and opportunities.

For those with less time to read, the book opens with an overview of conclusions and each chapter is headed by a summary.
GENERAL CONCLUSIONS

On the whole land reform has failed so far in Nepal

Land reform is not new to Nepal, with initiatives begun from the 1950s. There have been successes, such as the early removal of land authority from local overlords, and most recently land allocations to some ultra-poor and fee waivers successfully encouraging women to register land in their own names. A small amount of private land has been redistributed (under one percent of cultivated land) and 180,600 ha has been earmarked for partition to registered tenants (but partially implemented). An unknown number of land poor families may also have received plots in the 1970s and 1980s under parallel schemes to open up to the Tarai to farming and especially through the regularization of squatter camps which followed.

Nonetheless, the fundamental task of classical land reform is to ensure secure, sufficient and equitable access to land by all those who till, and this has not been achieved over half a century of reformism in Nepal.

While farm size has on paper declined this is much more due to inter-generational subdivision and distribution among family members to conceal farm sizes than to adherence to limitations on farm size.

Even with ceilings set, distribution is not significantly less skewed than in 1950. Moreover cultivable land stands idle while at least half the rural population (or an estimated nearly 3 million households) have no land or not enough even to feed themselves, let alone secure extra income to free themselves from crushing debt or to invest in the farm.

The most tangible distribution has been only in recent years and comprised allocating a mere 1,699 ha of land to 12,019 freed bonded labourers (Kamaiya) in one small part of the country. Moreover this land derived from marginal public land, not the private farming sector. Prospect of delivery and registration
of partitioned land meanwhile fades as these properties are bogged down by disputes and a backlog in the courts of over 100,000 cases along with laborious, and to this study, unnecessary, survey requirements.

**Nepal has performed poorly**

These outputs compare poorly with redistributive reform around the world. The better of these have seen more than 60% of rural households benefit (e.g. Vietnam, China, Taiwan, Japan, Korea, Cuba, Ethiopia, Mexico, Russia, Armenia) and deliver land to nearly a billion beneficiaries overall. However, the results are not worse than for the Indian sub-continent as a whole, excepting the Indian state of West Bengal.

**Failure to reform the farm-based economy has failed transformation overall**

*Meanwhile the uncertainties created by poorly enforced reforms have played a main role in inhibiting agricultural development and prosperity.* Half a century after the first significant land reform legislation (1957) neither land owners nor tenants and workers have clear and stable control over the founding means of production – the land. Out-migration from agriculture has become the major escape route but largely excluding the *most* poor. Agriculture itself stagnates.

Perhaps worse, *failure to perform, or misconstrued reform, have often made things worse for the disadvantaged majority.*

Even ‘successes’ have their pyrrhic underside. For example, a main output of imposing ceilings was concealment of ownership and severe erosion of the integrity of records. A main effect of tenancy registration was eviction; a main effect of taking uncultivated land from the rich was dispossession of the poor, and a main effect of presumed modernisation of tenure forms was characteristic abuse of customary property rights. Failure to perform overall contributed to civil war, land reform becoming a clarion call of the Maoist insurgency.

**The institutional basis of feudalism has been weakened but its subjects not yet liberated**

As public documents acknowledge, elements of feudalism continue to exist in 2008. These manifest most painfully in the persistence of serfdom, despite repeated legal outlaw of such conditions (in fact first in 1924). More widely there is unjustified rife indebtedness in the rural sector, caused by sustained exploitation of tenancy and worker arrangements, and gross insufficiency of land of their own to farm.
Nor has absentee landlordism been removed. This is integral to a continuing economic malaise through which better-off owners still gain more benefit from underpaying labour to produce food crops than from investing in the farm (and labour) to increase, improve, and diversify production.

Land reform did succeed in undercutting the powerbase of feudal property relations as taxers and controllers of land access. However the powers lost by these characteristic feudal zamindari (in this instance, talukdar and jimidar) became powers of the central state, not ordinary citizens.

Nationalisation of collective assets has been a questionable output of the reforms

Reforms have also seen the state emerge as the majority landholder through nationalisation of forests, wastelands and pastures and the abolition of customary property rights affecting those resources. This too was to the loss of the majority poor. While this has proven a common thread in so-called modernization of land relations globally including post-feudal and post-colonial reformism, reversals are ultimately proving necessary.

Modernization has in respects aided polarisation

The earliest and arguably most successful thrust of land reform from the 1950s was to consolidate holdings as fungible private property, whereas prior to this, many lands were held to be easily revertible to King and State without compensation. Without protection of tenants or labour included in this process, this too played its role in diminishing the rights and security of the majority, by finally sealing the gap between overlords and tillers; the former became registered land owners, the latter, mere tenants.

Poorly seen-through tenancy reform has backfired

An uncertain tenancy strategy followed and compounded failure to deliver land to tillers. Its shortfalls have made tenants even less secure than previously in their occupancy and conditions of labour. This is because it has been fully possible for landlords to evict tenants and/or put them on different annual terms. In this way, landlords rather than tenants have been liberated from the obligations inherent in feudal relations.

Plans to enable registered tenants to gain a share of the tenanted land were sound but weakly implemented. They also provoked a classic ill of failed reforms, a rise in under-used farmland in the midst of land shortage, landlords
preferring to leave their lands idle (and being permitted to do so) than to risk tenants claiming partition rights.

Lack of will to reform lies at the root of failures

Reasons for failure in Nepal’s land reform mirror those seen in other weak redistributive reforms. The immediate cause has been the repeated leaving of space for landlords to avoid or manipulate new legal requirements (and through this putting rule of law itself in jeopardy).

This shortfall in turn stems from weak will to succeed. This has been, compounded by a too imitative approach, relying upon orthodoxies which were never going to be easy to achieve in the best of circumstances and even less so in the progressively challenging times of the last half century. In many ways, and especially since the 1980s, Nepal was too late with adoption of a reform primarily built around militant and post World War conditions. This has not been an experience unique to Nepal, quite common in Latin America.

Successful reforms (and there have been a number, especially the 1940s to 1960s) have avoided this by being characterised by -

a) forceful, comprehensive and speedy implementation, preventing lack of adherence or avoidance by landlords (the most successful were completed within two to five years);

b) substantial support for beneficiaries beyond provision of land, enabling them to launch self-reliant and competitive farming as independent producers;

c) backing up the sector as a whole with significant investment in irrigation and roads, seed and fertilizer supply, technology, and cost-effective marketing systems;

d) recognition of the power of indebtedness to prevent and derail reforms and making credit not just cheap but directly and easily accessible to the very poor, and on a sustained basis;

e) the nesting of land reform in a well-thought through agricultural investment strategy and linking this to intelligent off-farm light industrial development;

f) in particular keeping redistribution out of the marketplace by compensating landlords at well below market values and in shares or bonds which allow them to access their compensation only by investing in off-farm productive enterprise, and with encouraging supporting assistance from the state; and
g) involving beneficiaries from the outset in implementing, regulating and monitoring reforms.

None of these conditions have existed in Nepal despite some being recognised as essential, most comprehensively by the High Level Land Commission of 1994-95 and now rearticulated to an extent in 2008.

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

Ironically, Nepal’s emerging democratisation over the same period has not helped, depriving the state of the militant autocracy which, for better or worse, has been a common factor in those land reforms which performed well during the 20th century.

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

While constraints and challenges abound, positive conditions for reform exist

New Nepal has revitalised its commitment to land reform. This is now termed scientific land reform to denote the inseparability of redistribution and growth and to emphasise the investment required in the farm sector, alongside removing grossest inequities and labour exploitation. inequities.

Positive conditions for seeing this through exist including –

a) Growing frustration with the continued stagnation of agriculture and acknowledgement that failure to reform is a main impediment that must be removed
b) The reshaping of democracy towards more genuinely inclusive representation of landless, land poor and exploited sectors excluded in the past
c) A more politicised society overall in which the rural poor begin to find their voice
d) The experience of civil war which has demonstrated how real land grievance is and how easily grievance can turn into violence
e) The fact that all parties in principle acknowledge feudal relations must be done away with once and for all and almost all have signed up to ‘scientific reform’ as the vehicle
A more supportive global environment with rising concern as to the continuing plight of the world’s three billion poor, most of whom live in agrarian societies where farming is the foundation of livelihood.

The maturation of redistributive reform beyond its anti-feudal and anti-colonial origins into a human rights context.

Better global understanding of the economics of land reform as social and economic transformation; following a period in which the links were doubted and large estate farming again favoured, there is renewed recognition of the role which landlessness and homelessness plays in sustaining rural, and by association, urban poverty. This is especially urgent in agrarian economies where it is becoming clear that hoped-for industrial revolution will be slow and limited in their absorption of labour, and

Acknowledgement that while equitable farm ownership is not a precondition to growth, peaceful and sustainable growth is difficult to achieve without it in agrarian states.

It is doubtful as to how far New Nepal is committed to redistribution

If there is any danger in the vision of scientific reform laid out thus far by its lead exponents (and most notably in the Ministry of Finance’s Budget Speech for 2008/09) it lies in the enthusiasm with which commercialisation of agriculture is being promoted without a clear plan yet developed to deliver land to tillers.

This has left redistribution vulnerable to tokenism, manifesting already in plans to provide the very poorest with tiny and marginal plots (including under electricity transmission lines) out of public land, this marginality to be offset by assisting beneficiaries to farm cooperatively. This falls into a welfare approach focused only upon the poorest of the poor, a tiny minority of those needing land.

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

While it is early days, this does raise query as to how committed New Nepal is to wholesale redistribution. And if not, how far the diminishment of public commitment is political, to be revived in the event of a Maoist election victory? Or how far is it the result of yet-to-be-thought through strategies?
Clear constitutional commitment (2007) has nonetheless been made to abolishing feudal land ownership. This is to be through scientific reform and within which land to the tiller remains at least in words a founding element. The Common Minimum Programme of main political parties endorses this (2008).

**The demand for redistribution has not diminished**

Popular demand for redistribution is high. As in past decades land poor (and allegedly, some not so land poor) are increasingly occupying public lands in organised camps. Local non-government organizations continue to press the Government for reforms. As the rising number of strikes and demonstrations suggest, demand for reform in relations and rights, including between people and government is high. The time for making good on old failures is necessarily now.

**Reform needs reform**

New times require new strategies to allow reform to be workable and it is far from clear that the current version of ‘scientific land reform’ answers the call.

Responsibility for thinking through implementation of land reform lies with an upcoming High Level Commission. This will be a cross-Party commission and as such may be constrained as to how radical its approach. Without assisting technical expertise, there is a risk that the Commission may find itself unable to do much more than echo the recommendations of its predecessor, the High Level Land Reform Commission of 1995, whose recommendations were largely ignored.

There is also a danger that the Commission may continue to focus upon the traditional elements of classical land reform, the landlord-tenant relationship, to the exclusion of other pressing issues.

These include how urban expansion and housing development is pursued in ways which put a halt to sharply rising speculative land acquisition and profiteering to the detriment and often dispossession of the peri-urban poor.

They also include re-evaluation of not just the systems for rights recordation but how rights are acknowledged (tenure reform). Properly constructed, this should enable an estimated two million households with stable occupation of houses or lands to finally secure legal registration of that occupancy. Currently this is permissive occupancy on public land within villages or beyond. Loopholes
need finally closing through which officials and middlemen are able to pervert the system of registration of ownership and transaction to their own benefit.

There is additionally need to revisit the utility and justice in retaining the classical distinction between private property and public property and the latter having fallen almost entirely to the de facto tenure of the state and overridden community as well as more particular indigenous collective rights. A more modern and democratic approach would see the state move almost entirely out of the public land holding sector and democratize not just its governance but its tenure.

It is not too fanciful to suggest that within a decade the entire land area of Nepal should and could exist as a mosaic of several thousand discrete community land areas, inclusive of valuable protected and managed forests, owned by those communities, but subject to national and federal protection regulation and oversight.

In the process of such reconstruction many lost customary rights, now chafing to be recognised after substantial suppression but not disappeared, may be finally accounted for and incorporated. This would occur through an area by area reconstruction of VDC areas.

In short, the challenge to the upcoming Land Reform Commission is to take a holistic and completely fresh approach to the troubled land relations of Nepal in ways which extend reformism beyond farmland distribution, and beyond agricultural commercialisation, the emerging touchstone of scientific reform.

Community Based Land Reform as the Way Forward

A thoroughly devolved approach may provide the path.

This would include three thrusts; the first amounting to community based redistributive reform, focusing on farmland rights and associated tenancy/worker relations; the second, amounting to the establishment of community based land administration, in which the community maintains its own land ownership and transaction records, and has control over related decision-making; and the third, relating to the reconstruction of the village area as a more inclusively based entity, by which many resources still outside its control are included (particularly in the Tarai).

As example, in regard to removing feudal norms a devolved approach would legally empower each rural community to take control over the removal of
feudal norms. This includes the power to deal with abusive tenancy, ensure idle lands are farmed, and to supervise the redistribution of above-ceiling lands, the ceiling to be set by the community itself. Power to regulate the use of public lands including regularisation of longstanding occupancy by unregistered households would also be required.

In these and other aspects the community would be subject to overriding principles, limitations and guidance by national (or in due course, federal) regulation.

These would include the process through which decisions and actions of communities are exercised to ensure genuine majority will. Mechanisms would need to be laid out for ensuring that the poorest households are included, essential given that poor peasants have remained vulnerable to the power-holding of larger land owners and allied officialdom.

A community based approach also has a better chance than top-down strategies of ensuring the participation of a crucial constituency in Nepal’s transformation, its youth. The community would also be subject to periodic inspection and oversight by autonomous district teams. The already existing powers of VDC to mediate disputes would be practically activated.

A devolved approach helps limit slippage into old ways after an initial flurry of activity, often the fate of bureaucratically-controlled reforms. It is doubly useful where consensus among political parties as to land rights is remote. While the national level bickers, local communities may get on with addressing their land constraints themselves and reach agreements which may be impossible on the national stage. A devolved approach also efforts the popular ownership needed for changes to be rooted and sustainably enforced. It also affords flexibility at the level it matters. Nor need the failure of one community to act adversely impact upon its neighbours; conversely, the success of one community may trigger demand in the next.

While national administrations classically fear releasing real power to the periphery it is precisely this form of democratisation that is necessary to ensure mobilisation, real inclusion of the majority poor and to allow monitoring to be sustained.

The stage is well set in Nepal for a people rather than state-driven reform to occur. Institutionally Village Development Committees (VDCs) provide a vehicle and
have been set upon a course of strengthened empowerment. Federalism opens
the door to a fresh new approach to the socio-spatial structure of governance.

Whether New Nepal and most immediately, the planned Land Reform
Commission are able to rise to the challenges remains to be seen. The chances
are mixed. Old ways of examining problems die hard, including as to what land
reform is and can be. International precedents for a community based approach
to land reform, land administration and governance are also new, or without the
redistributive element so crucial to Nepal. Just at the point when devolution is
acknowledged in Nepal as essential, its eyes are focused around federal state
levels rather than the grassroots. The competitive vibrancy of party politics
and in which each party is so strongly built along vertical lines encourages
centrifugal centralism, undermining opportunities for members of communities
to reach and sustain consensual decisions. Many key actors within officialdom
remain resistant to alteration to comfortable if not very productive ownership
arrangements, and in which they are the dominant absent players at the local
level.

Thus, much is stacked against a revolutionary or scientific land reform genuinely
occurring. It is just as easy for New Nepal to tiredly reiterate the platitudes and
plans of the past and to proceed in practice with business as usual, but this
time on grounds that this is necessary for the commercialisation of agriculture.
Helping policy designers move beyond this is the real land reform challenge
facing ordinary Nepalese. Bringing all these issues into public debate is the
immediate way forward.
Chapter One

LAND REFORM
IN THE GLOBAL CONTEXT
OVERVIEW

1. Nepal has been one of 55+ countries to embark upon redistributive farmland reform over the last century. Review of global experience is useful for identifying constraints and comparing success. This is especially so as most reforms adopt more or less the same strategies. Overall Nepal has been one of the less successful performers.

2. The objectives of redistribution are usually the same: social justice (feudalism cannot be removed without engineered change); civil peace (gross inequities predispose agrarian societies to instability or revolution); cost (sustaining dependent and landless majorities becomes expensive); anti-poverty (landlessness is both a cause and clearer correlate with poverty and oppression than literacy, gender or caste); and most of all, to hasten capitalist growth by transforming tillers into owners and landlords into capitalists by being forced to take themselves and their capital into new off-farm enterprise.

3. Successful redistributive reforms share common characteristics. These include comprehensive coverage, speed, with prompt and rigorous enforcement allowing no wriggle room for landlords; ample back-up to enable beneficiaries to be genuinely autonomous and competitive producers; sufficient credit to avoid fall-back into involuntary sales; complementing redistribution with massive investment in agricultural inputs, credit, infrastructure, technology and marketing services; and linking the reform with off-farm industrialisation especially by forcing landlords to invest in off-farm enterprises. Successful reforms eliminate absentee landlordism, further encouraging removal of capital and make owner-operated farming the foundation of agricultural development (land to the tiller). Devolved operations and involving beneficiaries directly in the implementation and monitoring of reforms are also quite common factors in success.

4. Poor and failed reforms share shortfalls in which most or all of the above are absent. Redistributive reform is difficult to see through in even the most encouraging of circumstances given the level of social transformation involved. Therefore it is not surprising that a founding cause for shortfalls is ambivalent political will to succeed. This is mostly the case where ruling governments are unwilling or unable to dissociate themselves from the landlord class. Therefore they limit implementation to sectors where their shared interests are not affected (by area or target groups) or succeed only in those tasks which serve to consolidate the security of existing holdings.

5. Capitalist transformation increasing the nature of holdings as fully fungible private property often undermines the objectives of equitable distribution. Registration and titling reforms have also often abetted the status quo, turning those who control and do not control farming more definitively into distinct classes of owners and non-owners, and which partial redistribution fails to remedy.

6. A tendency to discretely abandon redistribution within the private sector and to redistribute marginal public land instead, is a common symptom of failing reforms. This has mixed results, encouraging periodic waves of squatters and land grabbing. This is often by those already with land and means, leaving inequities in the private sector intact. This sustains grievance and the conditions which continue to impede productivity, and produce more landlessness.
7. The economic justifications for redistributive reform have proved most challenging to governments and the most-used excuse for failure to carry through on reform. A common justification has been to fall back on the idea that commercialisation requires large farms.

8. Over time the complex function of redistribution in transformation has become better understood. Experience suggests that redistribution cannot be expected to raise farm productivity or trigger transformation on its own. Correctly structured, it may contribute dramatically to this. At the minimum, a fairly successful reform establishes a more just and therefore more lasting framework through which modernization of agriculture may more equitably proceed. Social revolution and civil war rarely occur where asset distribution is seen to be fair.

9. A major beneficiary of redistributive reform has been the state itself. Governments routinely take over the powers previously enjoyed by landlords and agents and only unevenly restore these to local landholder control via collectives or eventually instituted local governments. Governments have also routinely appropriated non-farmland property in the name of reform, turning the state into the largest land owner. Aside from jeopardising the needed impartiality of the state in land relations this has frequently interfered with community based collective rights. It has also served to bring millions of hectares of forests, pastures and plains into disastrous open access through the act of conversion into public lands (or de facto Government Land).

10. Both trends are currently under widespread challenge on all continents under the name of land tenure and land administration reform. Drivers to changes include –
   a. democratising governance trends, with more devolution to the grassroots and refinement of the role of the State towards a regulatory rather than property-owning role, with a steady demise in the scale of public lands;
   b. widening in the focus of redistribution beyond landlords-tenants into inter-ethnic relations, especially where indigenous property systems persist and embrace significant areas beyond the farm;
   c. rising acknowledgement that pre-State customary land interests amount to property rights;
   d. new pro-poor global reformism, and which recognises that real property (houses, buildings, land) remains a key platform for moving out of poverty; and
   e. emergence of secure shelter and productive land (in rural economies) as a human right, and irrespective of whether or not its absence is generated by feudal, colonial or capitalist conditions.

11. Successful redistributive reforms during the 20th century relied heavily upon autocracy (in both communist and capitalist systems) to see reform through. This condition exists less and less today. In response, from the 1980s redistribution moved from state-led to market-assisted forms, but with limited success.

Emergent trends are towards people-led and demand-led reform, to secure stable reform in the face of a constant threat of changing governments. Beneficiaries are themselves becoming a key group of actors. Accordingly, land reform in the 21st century has less gone off the agrarian agenda than begun to alter its shape, foci and routes. In short, it has begun to be democratised.
I. AN OVERVIEW OF LAND REFORM, PAST & PRESENT

Nation states have always tinkered with and at times radicalised land and agricultural labour relations.¹ In agrarian states² the target is farmland rather than housing. Actions become land reform when a government purposively sets out to reengineer the way in which land is held, regulated and distributed.

When the reform is corollary to structural change in the way agriculture is supported towards economic transformation, this becomes agrarian reform. In practice the terms are interchangeable, as land rights reform affecting farmlands does not often take place in isolation from supporting sectoral reforms – and when it does, it usually fails (see below).

I. Redistributive reform has been the flagship of land reform over the last century

Not all land reforms seek to redistribute farmland (redistributive reform). Land tenure reform reshapes what constitutes a right to the land. This has become prominent in recent decades in respect of treatment of indigenous/customary land interests. Land administration reform alters the systems through which rights and transactions (sale, inheritance, gift, partition, etc.) are recognised, recorded, regulated, valued and taxed.

Redistributive reform alters the distribution of rights to productive land in favour of the usually poor majority. This has been routinely launched to rid a nation state of feudal or colonial land relations where productive land has come under the ownership and control of elites at the expense of those who actually cultivate the land and produce food and goods from it (tillers).

More often than not, the creation of inequities is largely a result of state-making, linked to the setting up of systems for extracting as much food, goods, labour or cash from producers, those who actually till the land. Caste and ethnicity have consistently provided the shape of feudal or other inequities but nation-making ‘extraction’ has been as consistently the driver.

No fewer than 55 countries embarked upon redistributive reform during the 20th century. Many sustain these in modified form until today. These include at least 13 countries in Latin America, 10 in Asia, 6 in Central Asia and the

¹ An early example is instructive; in drawing legal distinctions between those who overlord land and those who till and giving ownership of the land to the former, the First Agrarian Law of Rome in 231 BC in effect created feudal land relations in that empire.

² Most of the world comprises agrarian economies; those where the majority depend upon land-based production to survive.
Chapter one: Land reform in the global context

Middle East, 6 in Sub Saharan Africa and 22 former republics of the USSR and associated satellite Eastern European states. Annex A provides a snapshot of selected reforms. The commonalities in purpose and tools are striking. Their themes are drawn together in this chapter.

2 Land tenure reform has become as important as redistributive reform

Even where redistribution of ownership of farmland has not been on the agenda, most agrarian nations have altered - or begun to alter - how ownership of rural land is conceived. The main driver and vehicle for this has been titling programmes. From the 1950s western forms of private tenure were promoted through launching of individualization, titling and registration programmes in a host of states from Afghanistan to Kenya to the Philippines and Colombia. Land ownership was to be absolute as possible, fully fungible (able to be freely bought and sold) and subject to minimal obligation or conditionality, of unfixed term, and vested in the hands of individuals, rather than families or communities, the latter perceived as limiting marketability. The objective was to hasten capitalist transformation and bring as much farmland as possible into the hands of so-called progressive or yeoman farmers.3 The assumption was that landless and surplus labour would be drawn productively into urban-based industrial enterprise.

More recent versions of tenure and administration reform have a contrary objective: not to de-secure majority poor landholding in favour of elites and supposed productivity but to secure these rights and in their existing forms. This has mainly found expression in new legal treatment of unregistered occupancy, especially in Latin America, Oceania and Sub-Saharan Africa, but increasingly demanded in Asia and Central Asia. In Africa, this movement potentially transforms the land rights of 90 percent of population, who over the last century have accessed land as no more than lawful occupants of land co-opted by colonial and then post-Independence governments and referred to as public lands (see Annex A).

3 The land rights of indigenous peoples are moving into the realm of land reform

This latest reform represents a different but equivalent reform with redistributive reforms, given that after one to four centuries (in Latin America) of state-driven subordination of land rights, customary land rights are beginning to see legal acknowledgement as private property rights.

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3 Catalytic policies were the East African Land Reform Commission 1955 of the British Government and IBRD policy of 1961.
This in turn is creating innovations in how land is titled including emergent community entitlements, and where control over land holding is vested. This is moving steadily towards community levels.

**THE SHIFTING GROUND OF REDISTRIBUTION FROM CLASS TO PEOPLE & STATE**

A growing number of agrarian states are changing their constitutions and land laws to recognize customary or indigenous land interests as private property rights, held individually, or collectively by families, groups, village communities or sometimes ethnicities, and accordingly bound to be upheld by the courts. This potentially affects up to 1.5 billion poor people around the world. Change has been most delivered thus far in Latin America, Oceania (Papua New Guinea) and Sub Saharan Africa. It has also been apparent in industrialised economies in new legislation in prominently British Colombia (Canada), Australia, New Zealand, Norway and emergent in Russia.

No fewer than 12 Latin American states have reconstructed their laws to recognise the land rights of indigenous communities and awarded millions more hectares than awarded through farm redistribution policies. Indigenous comarcas in Panama, territorial awards in Brazil and Nicaragua, indigenous and Afro-Colombian resguardos in Colombia and TCOs (lands of original communities) are examples of legal regimes granting significant rights (Barry & Leigh Taylor, 2009).

In Africa, where farmers often have sufficient access to land but have been treated as mere permissive occupants on public land over the colonial/post-colonial 20th century, new legislation has begun to turn rural majorities into private property owners overnight and inclusive of expansive forest and pastoral resources such as in Uganda in 1995 & 1998, Tanzania in 1999, Mozambique in 1997 (Alden Wily 2006). Registration itself in these circumstances becomes a means of voluntary formalization of legally acknowledged rights, not the determining source of ownership.

**4 Classical redistributive land reform remains on the social transformation agenda**

Meanwhile persisting inequities in how productive farmland is distributed keep redistributive reform on the agenda, 100 years after the first attempts to equalize this following the Mexican Revolution. In the interim, industrialisation has not drawn landless off the farm. Land shortage and inequitable access to productive land continues to drive rural families to seek incomes beyond the farm, with fragmented families and circular migration increasingly common, including across national borders.

For as long as industrialisation does not take off and for as long as tillers are not assured security of tenure a socio-economic pattern in which almost every
Chapter one: Land reform in the global context

rural family in every agrarian state has one foot in the city and one foot in the rural areas, is likely to continue. Breaching the gridlock of truncated stagnation has once again become a widespread objective, but with recognition that land reform has to be a good deal more nuanced and clever in its interventions than previous redistributive reforms provided.

The management of capitalist transformation has overall become more not less of an urgent consideration in transitional states. Concerns around global and national food security and environmental degradation add to recognition that where the majority depend upon the farm for livelihood this may be less of a passing stage into industrialism than a future to build upon. Topically, this is what recent debates in China as to the effects of commoditising rural property under the new Property Rights Law 2008 has been all about, a grave subject shaping the future of no fewer than 810 million farmers in China – as well as food and labour supply to the cities. Nor does leaving such decision entirely up to the market place have the appeal it garnered in previous decades.

5 Land grievance is a major source of unrest and civil war

Struggles over access, ownership and benefits from cultivation have been time-old, and continue to ferment in more or less every agrarian state where injustice is perceived. It is no coincidence that of 71 current civil wars and insurgencies around the world, 84% are intra-state civil conflicts and well over three-quarters of these in agrarian economies which have seen mismanaged modernisation, political formation and socio-economic relations (Alden Wily, 2008a). While the role of land grievance is better understood each year, there is less awareness that the experience of civil conflict itself crystallises land grievance and demand.

Only in recent years have humanitarian and post-conflict reconstruction sectors begun to get grips with the need to place land reform routinely on the post-conflict agenda as elemental to state-building. A flurry of guiding handbooks are being produced. Even then, there remains a tendency to promote new registration as the remedy rather than tackling the structural inequities of rights distribution which trigger grievance. These are often left to fester, promising renewed conflict at a later date.

These include the Housing and Property Rights Restitution for Refugees and IDPs: Handbook for Implementing the Pinheiro Principles, 2007; Access to rural land and land administration after violent conflicts, FAO, 2005; Post-Conflict Land Administration, UN-Habitat, 2006; Toolkit for Post Conflict Land, USAID, 2005; and a further Guideline being drafted by UN-Habitat (2009) and by the US Institute for Peace.
Additionally, years of civil war produce changes in land relations which new governments and assisting agencies all too rarely recognise and tackle. Urbanisation may be expected to be rapid following a conflict with capital cities tripling or more in size and placing great pressure upon the peri-urban sphere. Returning capital is quickly translated into urban housing and commercial property developments, often corruptly handled in an environment of lax or weak regulation. Land prices soar, frequently aided by an influx of peace-keeping and assistance agency personnel. Landless, job-less and poor are generally less content to see pre-conflict injustices revitalised. Polarisation in society and demands sharpen.

Conversely, optimism at the ending of conflict and openness to new ways of structuring society provide a window of opportunity for fresh approaches to land reform to be explored. Lack of will and innovation threaten return to unrest and even war in places as far apart as Sudan, Angola and South Africa, Cambodia, Aceh, East Timor and Afghanistan.

6 Land reform has changed its shape over the last 100 years

The above suggests transitions have been occurring in land reform over the last century as outlined in Box 2. Reform exists today as a more broadly-based initiative than in the 1920s. From mid-20th century attention turned to land administration as solution to ills. Recent decades has seen a shift into rights-based land reform but which in the process has also refocused attention upon how farming land is distributed.

<table>
<thead>
<tr>
<th>MAIN PHASES IN LAND REFORM</th>
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<tbody>
<tr>
<td>1910 -1970s Land to the Tiller Reform</td>
</tr>
<tr>
<td>• Focused where feudal and post-colonial (esp. Spanish/Portuguese) relations pertained, characterised by gross inequities in holdings, landlessness &amp; related indebtedness</td>
</tr>
<tr>
<td>• Objective: land to the tiller, in two versions -</td>
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<tr>
<td>• Collectivization producing mainly state-owned farms or collectives (e.g. USSR, China, Vietnam, Cuba)</td>
</tr>
<tr>
<td>• Collectivization producing mainly locally-owned collectives (e.g. Mexico, El Salvador, Honduras)</td>
</tr>
<tr>
<td>• Inter-class redistribution from large to small owners and tenants/workers (e.g. Japan, Taiwan, Bolivia, Egypt, Guatemala, Bolivia, Peru, India, Nepal)</td>
</tr>
<tr>
<td>Results: limited/delayed polarisation and commoditisation of land; state capture of control over land relations and varying degrees of state capture of productive assets</td>
</tr>
</tbody>
</table>
### 1960s – 1980 Land Administration Reform

- **“The great cadastral caper”;** individualisation, survey & titling, donor-driven and delivered as privatisation for growth and designed to encourage polarisation in agricultural ownership in favour of better-off
- Usually promoted in non-feudal agrarian economies

**Results:** centralised state control over land relations, undermined equitable customary as well as feudal systems, state capture of non-farm or house property and especially collective assets, accelerated market in land, concentration in ownership

### 1980s - 1990s Back-tracking on Redistributive Reforms

- Widespread de-collectivisation (e.g. China, Vietnam, former Soviet Republics, Mexico, Nicaragua, Peru)
- The rise of assisted and market-led land purchase as route to redistribution, most notably in Latin America following the debt crisis in 1982 but also applied in Asia and Southern Africa
- A final phase of de-colonisation in (southern) Africa including racially-defined restitution
- Emergence of worker-led peasant land movements in Latin America

**Results:** some surges in agricultural growth but not as much as promised, rise in landlessness, mainly failure of market-assisted reforms to redress inequities, rising discontent among landless and land poor

### 2000s - Revitalized Reformism across the Board

- Land tenure reform comes into its own in special regard to customary rights on all continents with significant recognition of territorial and sub-territorial collective ownership in Latin America and Africa
- Internationalisation and popularisation of indigenous, peasant and farm worker based movements
- Establishment of access to land in agrarian economies as a human right
- Expansion in the focus of reform from farm to non-farm land, from individual to collective interests
- Widespread reassessment of role of state as majority land owner and the meaning of public lands
- Inclusion of urban and peri-urban land issues into reform with regularisation of squatter occupancy in slum cities and innovative housing strategies
- Adoption of farm redistribution strategies through the backdoor; progressive land taxation favouring the poor, market-led assisted land purchases, agricultural wage and tenancy reforms & taxing of idle lands
- Democratisation of land governance towards community land boards and community maintained registers

**Results:** yet to be seen, but unlikely that the land rights of majority urban and rural poor will go off the agenda. International land grabbing between States adds a new dimension of threat.
People are taking more control of land reform

Broadly, these shifts in land reform have been discernible –

a. from state-controlled to market-assisted redistribution: through providing cheap credit to landless farmers to buy farms of their own, including adoption since the 1980s of the World Bank ‘willing buyer willing seller’ matchmaker programme in Thailand, Paraguay, Indonesia, Philippines, Guatemala, some Indian states, and with least success in South Africa, Namibia and Zimbabwe (failure in the last resulting the Mugabe direct expropriation programme without compensation);

b. from state-driven to people-led reforms: as through increasingly international landless workers and peasants movements such as in the powerful Brazilian-based Landless Workers Movement (MST) with branches in most Latin American states. In practice dual approaches are often pursued; the state supporting direct redistribution of lands in some circumstances and endorsing market-led redistributive reform in others. Brazil, South Africa, Bolivia and the Philippines are examples;

c. from collectivization to individualization: seen mainly in widespread de-collectivisation and emergent privatised individual household access or ownership. At the same time, recognition that collective properties exist and are viable is emerging (see below);

d. from a focus upon equitable farm small holdings to a shift of focus onto the poorest rural underclass. This reflects a tendency to abandon across the board redistribution programmes in favour of attending to immediate and less expensive homestead needs of the absolute landless, women and ethnicities;

e. from abolition of tenancy to securer tenancy: land reforms tend to have first attempted to improve conditions, then abolish traditional tenancy altogether, and now revert to permitting tenancy and even encouraging this with more attention to rental markets especially in urban and peri-urban areas;

f. from outright redistribution to administrative measures to limit polarisation through rigorously progressive taxation to inhibit large farms and especially idle farmland, more vigilance on minimum wages for farm workers, and limiting speculation by making undeveloped land un-saleable, all only showing signs of being partially successful;

g. from the centralised cadastre to simplified and landholder-controlled community land registers and decision-making boards, with the power to
set their own floors, ceilings and redistributive mechanisms by majority vote (e.g. Ethiopia, Tanzania, Mexico);

h. from ‘farm to forest’ in the sense of widening the resource targets of reform; this is especially so where indigenous/customary rights have come into the picture and where disputed rights affect not just farmland but expansive collecting held pastures, fishing swamps, forests and woodlands and wildlife-rich multi-use plains;

i. from the rural to urban domain; along with rising urbanisation, a belated rise in the regularization of ‘untenured’ settlements (squatter towns and cities), the rise of pro-poor urban planning and diverse experimentation into home-building and home-owning schemes targeting the urban homeless and landless (most advanced in India, Venezuela and Brazil); and

j. from a focus on the landlord-tenant relationship to the state-people relationship in terms of where control over land rights is vested; in terms of how customarily-owned lands are treated in law, particularly those still held and use collectively like forests; a broadening of scope of rural land reform to embrace the landless, not just tenants; and new provisions for ways in which land may be legally held and registered allowing for family, condominium and collective forms.

8 The sum of changes is emergent democratization of land rights and governance

The upshot of these transitions is emergent democratization of land reform rather than its abandonment. In sum, land reform is moving from state-led through market-assisted to rest increasingly upon people-driven programming. The right to land movement progressively involving millions of landless or land poor rural and urban families, helps to secure productive land or shelter in cities, and irrespective of colonial, feudal or other relations. Public-private partnerships are also emerging as one route to achieve objectives.

9 The role of the State in land relations is under scrutiny

More and more countries have begun to purposively reduce the state/public land estate which reformism through the 20th century so wholesomely delivered to the state via both redistributive and titling reforms. A global measure of this shift is that between 2002 and 2007 forests owned by governments declined by 7% - quite aside from widespread devolutionary approaches as to how forests

5 Refer CLEP, 2008.
6 Botswana is a leader on the African continent in this, reducing its public land asset down to 5%.
are managed and used (Sunderlin et al. 2008). The most recent restitution has occurred in Liberia in regard to the expansive forest resource (59% of the total land area) legally recognised in September 2008 as rightfully the collective property of respective local communities within whose modern customary domains these forests fall (Alden Wily 2007 and SDI, 2009).

10 New threats to rights abound

Just as equitable land reforms returns forcefully to the agenda and as unregistered/customary land rights over vast forested and pastoral lands begin to find more legal force, food security concerns are accelerating a new international land grab, or what is being referred to as a new era of neo-colonialism or in the case of Africa, a new ‘scramble for Africa’.

This comes on the back of rising grasp of public lands in Latin America and Asia by multi-nationals, itself accelerated by the boom in demand for non-petroleum agro-fuels. Within the last two years 15 million hectares of public land has been leased by African and Latin American Governments to China, Japan and South Korea and especially to wealthy Middle Eastern States (Borger 2008, Blanche 2009).

No immediate end is in sight; FAO reports that at least 515 million ha of new land is required by 2030 to meet the demands of new agricultural production, agro-fuel development and industrial forestry (ILC, 2008).

The problem lies in how State Land or public land are legally conceived, as owned by Governments or as rightfully the property of rural communities. This is particularly problematic in countries where the main form of ownership is customary but under national laws which are yet to recognise these rights as amounting to property interests. Thus, for example, Sudan has been able to long-lease 90,000 ha to the Dubai Government, land which is customarily owned and occupied by thousands of Sudanese, but whom the law still regards as occupants on State Land (Morgan 2009). Similarly, 1.3 million ha of customary property owned collectively by thousands of peasants in Madagascar is in the process of being leased to South Korea (Borger 2008). Kenya is considering leasing 50,000 ha of prime river-side land belonging to pastoralists to Qatar.

A compromise lies in assisting communities to lease out those lands themselves and to pay significant tax on their revenue, but the rent-seeking benefits to Governments seem too high for them to resist taking the trouble to develop such mechanisms.
With the exception of Indonesia, Cambodia and the Philippines, land-short Asia is not significantly affected by these trends. There, intra-class distribution of farmland continues to dominate the land rights and land reform debate, including in Nepal.

II. REDISTRIBUTIVE REFORM

1 Land to the tiller has been the maxim of redistributive reform

The founding instrument of differentiation remains in the distinction between those who own the farm and those who work the farm. Accordingly the dominant task of land reform was and remains the transfer of these rights to those who cultivate - ‘land to the tiller’.

In practice land to the tiller has been sought through two routes:

i. by direct transfer of land from landlords to tenants, serfs and workers, and which retains the existing and private nature of land ownership (and now everywhere commoditised); this approach has been favoured by Asian reforms; and

ii. by indirect transfer via the state which co-opts productive land then shares out its ownership or access equitably among farmers. This disposes the nature of ownership towards collectivist models, as well as often changing the mode of production towards collective operations.

2 Collectivisation restructured the nature of ownership as well as its distribution

Within the collectivisation mode there has been difference in how the land itself has been tenured. Often the state has retained ownership making tillers tenants of state, the tillers themselves organized in large state farms or smaller production collectives (e.g. China before the 1980s, USSR and Cambodia).

In other cases farmer collectives or cooperatives themselves became the land owners (e.g. Mexico, China after 1980, Vietnam, Chile & Tanzania). Frequently a mix of the two strategies is pursued, such as in Cuba where private or corporate plantations became state farms in 1959 hiring workers alongside peasant farming organized into local farm-owning cooperatives.

Access to productive land has been broadly equitable in collective arrangements. Redistribution of farms to tenants has rarely produced equity in terms of same sized plots to each family.
Both forms of redistribution have almost everywhere successfully narrowed the range of holdings, bringing large scale farms down in size and reducing the proportion of families living on sub-economic plots. These last effects have tended to dwindle with generational subdivision.

3 Tenancy reform has been the handmaiden of landlord to tenant redistribution

Tenancy reform has usually gone hand in hand with redistributive reforms. This is because many farmers remain with inadequately sized farms for subsistence or because they do not possess the means (seeds, tools, ploughs, fertilizer) to farm autonomously. Tenancy reform accordingly regulates the relationship of owners and tenants. This has often been intended as a temporary measure while tenants are assisted to acquire land of their own.

Tenancy reform quite often begins with attention to conditions of tenancy such as protection against eviction, the share of the crop the tenant may retain, the right to have secure shelter on the owner’s farm, etc. It tends then to move into abolition of tenancy altogether with the intention to either establish owner-operated farming throughout the sector or to turn traditional tenancy (sharecropping) into regulated wage labour arrangements, with special attention to the length of contracts and wage levels.

4 The source of distributed land tends to change

Another common trend has been declining focus upon the private land holding sector as the source of land for the landless and land poor. Later, if not sooner, Government/State/public lands frequently become the source of provision of lands to these sectors.

The reasons are various, but most often simply because the government of the day loses the appetite for interfering with the private land sector, taking from the rich for the poor. Unwillingness to jeopardise the political support of larger landowners and landlords of tenants underlies this, a group with which bureaucracy itself is so frequently allied. Public rationalisation is more technical; a claim, real or spurious, that the private sector has already been divested of the land it can surrender, and to lower ceilings further will reduce farming to a level which cannot sustain commercialisation. This argument holds no water where large estates continue to exist in abundance, the case in the Philippines, Indonesia, Southern Africa and Latin America.

Another justification is in that governments have found it practically difficult to remove or partition large holdings, finding it costly, complex and hard to
see through. A high proportion of cases get bogged down in disputes. The avoidance tactics of landlords are difficult to track. What this simply means is that governments have performed poorly and do not want to risk further failure.

Together with a wish to avoid inter-class unrest or political demise, it becomes simply more convenient to take needed lands from what is usually an abundance of public lands owned or controlled by the state. Landless from Brazil and Venezuela to India and Afghanistan contribute to the focus on public lands as the source of land through land invasions, which helps focus redistribution upon the regularisation of what become often well-organized settlements.

5 Justice, peace, growth and poverty reduction: the justifications for redistributing farmlands

These objectives consistently drove 20th century redistributive reform and continue to do so: social justice, to limit social unrest, economic growth and to help reduce poverty, a major social and financial cost to society.

Political party objectives have usually driven the reforms. At one end of the spectrum are revolutionary agenda (e.g. China, Cuba, West Bengal, Eritrea). At the other are capitalist agenda seeking to limit the expansion of communism by sufficiently equalising rural land access (e.g. Japan, Taiwan, South Korea, Iran, Guatemala, Honduras, Nicaragua, and Ecuador). Thus land reform has not been the preserve of communism although it has been its strongest progenitor, and the principles of redistributive reform are always socialist in the sense of equity objectives, irrespective of longer-term goals.

6 Feudal land relations have especially provoked reform

Few modern agrarian states have been able to survive or tolerate the abuse of personal rights, labour and livelihood which accompany feudal productive relations. It is taken as given that a key structural driver sustaining these is an absence or insufficiency of secure productive land access. This leads the poor into a cycle of indebtedness and dependency and a lack of the bargaining leverage needed to keep agricultural wages or tenancy arrangements stable or at fair value for labour. Those without even homes of their own are particularly vulnerable to sustained pauperization and oppressive labour relations.

7 Landlessness helps drive poverty and disadvantage

Functional landlessness in agrarian economies is understood not just as correlate with poverty and oppression but as a structural driver. This is best
demonstrated in India which has the largest number of rural poor and largest number of landless on the planet and where it is landlessness, not illiteracy, gender or caste that is the best predictor of poverty. Secure and fair access to productive land has accordingly often become a constitutional and human right.

However it does not necessarily follow that providing real property (land and housing) is the only way out of poverty or injustice, with education and jobs proving equally competitive. Nonetheless in agricultural societies, it remains until today one of the obvious starting points to help move populations out of mass poverty.

8 Popular empowerment forces governments to act

Sooner or later, those affected also become decreasingly tolerant of land-based inequity. It is no surprise that so many land reforms have their origins in revolutionary social movements (e.g. Mexico, Bolivia, Cuba, Nicaragua, Peru, El Salvador, China, Vietnam & Ethiopia). Nor as observed earlier is it a surprise that so many civil conflicts in the world today have protest at land deprivation among their core drivers.

Social unrest has significant socio-political and economic costs and land reform is conventionally regarded as an avenue of pre-emption or remedy. More recently, the role landlordism plays in impeding democracy has been demonstrated in comparisons between Colombia and Costa Rica with El Salvador and Guatemala. This is so that even sceptics as to the economic utility of land reform acknowledge redistributive reform as a proxy for democratisation (Rashid 2000).

9 Economic justifications for redistribution are complex and contested

The economic results of redistributing farm access or ownership more equitably remains uncertain territory until today. Volumes of theory and heated debate exist around this. No single indisputable experiential fact has emerged after 100 years other than it is both difficult to isolate the economic effects of

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8 Deininger (undated) and 2003.
9 Among the volumes of literature it is difficult to select the most influential but certainly the following writers have been among prominent advocates or critics of redistributive reform: the UN in its seminal 1951 paper on land reform, Dorner, Chayanov, Myrdal, Lipton, Flores, Chayanov, Warriner, Berry and Cline, Barracough, Cheung, de Janvry, El-Ghonemy, Baland, Binswanger, and more latterly, De Soto, Bernstein, Deininger, Rashid, Borras, Kay and Lodhi.
redistribution and where this is done the results are disparate and complex. The snapshots of reforms in the following chapter illustrate as much.

A main reason for the disparities is that while redistribution may have common approaches, the circumstances in which it is implemented vary widely. Additionally, redistribution on its own is evidently insufficient to raise farm production or to trigger industrialisation – but neither is it often attempted on its own. How far redistribution is nonetheless an indispensible element of a wider menu of reforms is still debated.

The dominant position is that growth and transformation (beyond the farm) will be more stable and faster where land distribution is more equitable. A polar position argues that farm land distribution has been irrelevant to growth, using Malaysia, Thailand and Indonesia as examples - but noticeably excluding the miracle island economies of Taiwan, Hong Kong and Singapore, some of the most successful sites of rural or urban equity-driven reformism (social housing).

10 Agricultural growth as stepping stone or cornerstone to transformation?

Cross-cutting the debate is difference of opinion as to the role of agriculture itself in capitalist transformation. One view holds that a rise in farm productivity (through redistribution or otherwise) is mere stepping stone to industrial and urban growth. Another regards agriculture as a cornerstone of modern development in its own right and in which continuing high levels of dependency upon the farm and farm-related production in most states despite urbanisation is anticipated to continue.

In between these positions lies a third, which argues that well-paced and sustainable industrialisation and urbanisation may best occur from a platform of sustained equitable rural holding, not through squeezing out of the landless, such as posed in classical Marxian theory. This position principally draws upon the redistributive successes of Taiwan and Japan as evidence.

11 Entering the farm size debate into the equation

The debate around farm size is part of the economic impact debate. The more traditional argument has been that farming is most productive at scale,
giving rise to protection of existing large scale farming at one extreme (e.g. the Philippines, Bolivia, Chile) and collectivization of small farms at the other (e.g. USSR, Mexico, Honduras, Nicaragua, El Salvador). It has also justified the creation of large state farms (e.g. Cuba, Russia).

More recently, research suggests that although too-small farms may waste labour, they absorb surplus labour, while large farms under-utilise land and are hectare for hectare less productive than owner-operated farms.

Advocates of both positions abound and the farm size debate has generated an entire literature of its own (ably reviewed by Rashid 2000). Broadly, the conclusion may be that while the inverse farm size relationship is likely a permanent feature of agriculture it is equally true to argue that the desirable farm size changes with technology, and requires periodic upscale. This has been seen in many reforms over the medium to long term once intensification has reached its limits. Consolidation of parcels becomes most viable at that point and strictures preventing the renting in of additional land and especially that belonging to neighbours are usefully relaxed. Japan, Vietnam and Taiwan are good examples in the Asia region.

12 Themes of economic justification for redistribution

Four broad economic justifications for equitably redistributing farmland may be discerned

a. The mitigation argument: unmanaged concentration (landlessness and homeless) is much more expensive for the economy than early measures to limit this;

b. The productivity argument: land reform is necessary to raise the output of productive lands; the greatest incentive for a cultivator to produce is to own the means of production, the land, and to be in complete control of his labour; this leads logically to a land to the tiller reform, and upon which farm size issues may be addressed if needed, through cooperation among small owners and consolidation of dispersed parcels;

c. The transformation argument: redistributive reform is necessary to trigger capitalist transformation including industrialization; correctly structured, redistribution transforms cultivators into owners and sends surplus capital and labour (landlords) off the farm into new businesses and wage labour.
d. The *labour argument* is integral to the above: with too few owners a monopoly in land is created which creates a monopsony in the labour market; land owners become price-makers rather than price-takers, able to keep labour prices low and to continue to take their profit from labour, not from production (Medaille 2005). Widening ownership raises total output and average income by breaking this monopsony and creates a demand for commodities which in turn drives investment in light industrial, non-agricultural production.\(^\text{15}\)

Against the above are arguments made that –

a. the objective of land reform should focus upon labour, not land and should ensure fair rental markets rather than ownership;

b. that the agricultural sector is in any event bound to decline with growth as a contributor of wealth or absorber of labour;

c. that the rural areas is the wrong place to focus pro-poor asset reforms given that half the world now lives in cities;

d. that the inverse farm size argument is less about peasant farming per se than levels of technology;

e. that equitable distribution does not in itself remove poverty; and

f. that taxation is a more acceptable instrument for coercing raised farm productivity.

There is in these analyses usually a broad conclusion that land reform has been neither necessary nor sufficient for successful economic growth – and should not be justified on economic grounds.

**13 Social justice as stepping stone to sustainable wealth**

Even rejection of redistributive reform as a driver of economic growth stops short of dismissing its role in helping to shape society more equitably. Adding to this is acknowledgement that *insufficient land* in rural society is indisputably linked to a host of ultimately economic as well as socio-political disadvantages biased against smaller and poorer landholders and landless.

These include lesser access to justice, credit, extension, registration, certification (birth certificates, marriage certificates and citizenship identity cards), education

\(^{15}\) Deininger 2003 provides a useful in-depth comparative case between landlord-dominated El Salvador and Guatemala on the one hand and smallholder dominated Colombia and Costa Rica on the one hand to show the impact of land concentration in influencing socio-economic capital and per capita growth.
and wage employment. These are quite aside from the immediate labour exploitation and indebtedness which most afflicts the land poor. Conversely, larger land owners and especially traditional landlords enjoy unfair economic as well as social privileges.

Thus, even should there be no proven causal relationship between land reform and growth, inequitable land access is broadly agreed to pose a barrier to equitable growth. Successful redistribution definitely helps remove this. It is also acknowledged that tenants and landless perceive the connections and should be listened to for their instinctive economic rationality. Once peasants cease to demand land of their own and turn exclusively to demand for jobs, pressure for reform logically falls away. While the peasant is not always right, the stark diversity of opinions among land reform economists suggests there are too many variables not to take the views of those affected firmly into account.

III. FINDINGS & LESSONS

1 Redistributive reform has been neither largely successful nor largely unsuccessful

Among the 55+ redistributive land reforms since the 1910s there have been some failures (e.g. Bangladesh), some reversions (e.g. Egypt, Syria) and a good deal of shortfall in meeting objectives in nearly all other cases.

At times a reform has been fairly effective, but not lasting (e.g. Afghanistan, Chile and Cambodia).

More commonly, reforms have entered new and altered phases over five or more decades, meaning that while they may have failed in a first phase, they do better in a new, refashioned attempt. This has been quite commonly the case with collectivisation and then de-collectivisation.

Furthermore, success depends upon the criteria used; is a reform which succeeds in providing land to only 10,000 beneficiaries a failure? Is a reform which liberates tenants from dire conditions but does not extend land ownership to them thereby a failure?

Listed below are main findings drawing upon close review of some 20 or so cases. Many of these are further overviewed in Annex A.
2 A great deal of land has been redistributed

The area of rural land redistributed under compulsory redistribution since the Mexican revolution in 1917 (the start-point for modern redistributive reform) is considerable. More than 150 million ha of farmland has been redistributed to more than 350 million households over the 20th century – in fifteen states alone (Table 1). This more than doubles with inclusion of the former Soviet Republics and satellite states, and could more than triple should all cases of state-led redistribution be included (e.g. Iran, Afghanistan). Distributed farmland overall could amount to nearly half a billion hectares given to nearly one billion beneficiaries.

<table>
<thead>
<tr>
<th>Country</th>
<th>Arable Area Redistributed (Ha)</th>
<th>As % All Arable Land</th>
<th>Number of Beneficiaries (Households)</th>
<th>Number Beneficiaries as % Rural Households</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Bengal, India</td>
<td>1,040,000</td>
<td>14.9</td>
<td>2,540,000</td>
<td>34.0</td>
</tr>
<tr>
<td>All India</td>
<td>9,850,000</td>
<td>5.4</td>
<td>12,400,000</td>
<td>5.3</td>
</tr>
<tr>
<td>Philippines*</td>
<td>5,900,000</td>
<td>47.0</td>
<td>3,000,000</td>
<td>40.0</td>
</tr>
<tr>
<td>Vietnam</td>
<td>11,000,000</td>
<td>90.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>China</td>
<td>64,000,000</td>
<td>50.0</td>
<td>210,000,000</td>
<td>80.0</td>
</tr>
<tr>
<td>Taiwan</td>
<td>278,307</td>
<td>48.0</td>
<td>432,000</td>
<td>62.5</td>
</tr>
<tr>
<td>Japan</td>
<td>2,000,000</td>
<td>80.0</td>
<td>4,300,000</td>
<td>60.9</td>
</tr>
<tr>
<td>Korea</td>
<td>577,000</td>
<td>65.0</td>
<td>1,646,000</td>
<td>76.0</td>
</tr>
<tr>
<td>Chile</td>
<td>9,517,000</td>
<td>60.1</td>
<td>58,000</td>
<td>12.7</td>
</tr>
<tr>
<td>Brazil*</td>
<td>13,100,000</td>
<td>11.3</td>
<td>266,000</td>
<td>5.4</td>
</tr>
<tr>
<td>Mexico</td>
<td>13,375,000</td>
<td>42.9</td>
<td>3,044,000</td>
<td>67.5</td>
</tr>
<tr>
<td>Bolivia</td>
<td>9,792,000</td>
<td>32.3</td>
<td>237,000</td>
<td>47.5</td>
</tr>
<tr>
<td>Peru</td>
<td>8,599,000</td>
<td>28.1</td>
<td>375,000</td>
<td>30.8</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>3,186,000</td>
<td>47.1</td>
<td>172,000</td>
<td>56.7</td>
</tr>
<tr>
<td>El Salvador</td>
<td>401,000</td>
<td>20.0</td>
<td></td>
<td>12.0</td>
</tr>
<tr>
<td>Cuba</td>
<td>80.0</td>
<td></td>
<td></td>
<td>75.0</td>
</tr>
<tr>
<td>Venezuela</td>
<td>19.3</td>
<td></td>
<td></td>
<td>24.4</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>7.1</td>
<td></td>
<td></td>
<td>18.5</td>
</tr>
<tr>
<td>Egypt</td>
<td>390,000</td>
<td>15.4</td>
<td>438,000</td>
<td>10.0</td>
</tr>
<tr>
<td>Zimbabwe*</td>
<td>2,371,000</td>
<td>11.9</td>
<td>40,000</td>
<td>3.1</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>68.0</td>
<td></td>
<td></td>
<td>60.0</td>
</tr>
</tbody>
</table>

Market-led redistribution has largely been a failure

Less success has been experienced with willing seller-willing buyer approaches. Table 2 illustrates the case. The two commonly cited success stories are Thailand and Paraguay. The consensus after several decades of market-assisted reform is that it may not be worth the time or investment and is actually unsound. The strategy rests upon persuading large farmers to release land for sale for which they are paid the full market value; this is an approach which directly contradicts the anti-feudal or anti-colonial objectives of redistribution requiring a sense of justice delivered to be fully successful. It has proven particularly obstructive where it continues alongside differently constructed reforms in the smaller peasant sector, raising accusations of unfairness to those who have to pay for their lands (e.g. Philippines, Venezuela).

Large farmers also use the programme to off-load marginal lands ahead of threatened restitution or redistribution by other means (e.g. Zimbabwe, South Africa, Thailand, Philippines). The poor and often landless buyer is in contrast saddled with debt, having to repay whatever loan government or lending institutions offer under the programme. Not surprisingly, enthusiasm among the poor is low and default high.

Matchmaking a willing buyer with a willing seller has also proven expensive and difficult and land banks have not provided the solution in all cases. Attempts to decentralise the programmes into local authorities has often opened the door to more direct alliance between officials and large owners, and with malfeasance common.


### Table 2

<table>
<thead>
<tr>
<th>Country</th>
<th>Period</th>
<th>Redistributed Land as % Total Agricultural Land</th>
<th>No. Beneficiaries as % total Agricultural Households</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>1997-2005</td>
<td>0.4</td>
<td>1.3</td>
</tr>
<tr>
<td>Colombia</td>
<td>1994-2001</td>
<td>0.2</td>
<td>0.3</td>
</tr>
<tr>
<td>Guatemala</td>
<td>1997-2005</td>
<td>4.0</td>
<td>1.3</td>
</tr>
<tr>
<td>Philippines</td>
<td>2000-2005</td>
<td>0.01</td>
<td>0.03</td>
</tr>
<tr>
<td>South Africa</td>
<td>1994-2005</td>
<td>1.6</td>
<td>4.1</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>1980-1996</td>
<td>16.6</td>
<td>5.8</td>
</tr>
<tr>
<td>Namibia</td>
<td>1990-2005</td>
<td>6.0</td>
<td>0.1</td>
</tr>
</tbody>
</table>

Source: Borras and McKinley 2006.
In recent years the World Bank, the promoter of this mode of redistribution, has reduced its strong and at times coercive advocacy for adoption of this kind of reform, now presenting market assisted land reform as one option to be considered. 17

4 Foreign interference in land reforms has been common

Mexico, China, the USSR and Cuba are among those states where the drive to reform came from within the state. A surprising number of reforms have been driven by the US, in Latin America, East Asia (Taiwan, Japan and Korea) and Afghanistan and Iran.

The 1960s saw South Asia respond to strategies reshaped by the agrarian reform thesis promulgated by UNDP although these built upon already existing commitments to redistribute land in the 1950s (Nepal, India and Bangladesh).

The 1980s saw a further reconstruction towards neo-liberal approaches, globally promoted or imposed by international financial institutions (IFI) and often succeeding in shifting the focus of reforms from the rural poor to large scale farming sectors to develop agro-exports assisted by transnational investors. This is beginning to see challenge and reverse; as above with market-assisted redistribution, there is rising persuasion that these have let the poor down by strategies which are at the expense of the peasant farmer and worker (Barraclough 2005, Akram-Lodhi and Kay 2008).

5 Redistribution has often been incomplete

In India, Bangladesh, Cambodia, Philippines and much of Latin America involuntary landlessness and near landlessness remained throughout the height of reformism and since. This goes alongside sustained skewed distribution among landholders.

In Latin America 50% of farmers control only 2% of the land and 26% of farmers/businesses control 90% of agricultural land. Much of this lies idle. Mexico and Cuba are main exceptions in that region. The situation is somewhat better in East Asia (Taiwan, Japan, Korea, Vietnam and China) and where collectivisation rather than landlord to tenant processes have been pursued (see below).

6 Collectivisation has fallen out of favour

Individual holdings now dominate the end-reform process. De-collectivisation has proceeded since the 1980s. While the state (e.g. Vietnam) or collectives (e.g. China, Mexico) may retain title to the soil, private rights in the form of usufructs of lengthening term are now the norm. These usufructs may be transferred, inherited, sold or mortgaged. There is variation in the extent to which communal permission is required for transfer (cf. China and Mexico where this is required, with Vietnam where no permission is required to sell or mortgage a holding right). Russia and many former Soviet republics retain state ownership of the land and collective formation but with increasingly individualised operations. Georgia, Kyrgyzstan, Moldavia and Armenia are most advanced in privatising farms.

Decollectivisation should not be viewed as evidence of failure of land reform, for this proved more successful in comprehensively including farmers in the changes and then in being able to subdivide State Farms or Collectives in more even ways. In China for example, distribution of collectivised land from 1984 has been to all member households. This was also the case in Vietnam, Armenia and Mexico (Annex A). In contrast, direct transfer of above-ceiling surplus lands or partition of tenanted land has often (but not always, as Taiwan, Korea and Japan illustrate) embraced a smaller proportion of rural poor. The range of farm sizes has also remained wider where land has been distributed from landlords to tenants (e.g. India, Nepal, Guatemala and Bolivia).

7 Decollectivisation unevenly extends beyond the farm

Government quite frequently retain ownership and control of expansive forest and pasture lands (e.g. Cambodia, Uzbekistan & Taiwan). This is not the case in Vietnam, Armenia or Mexico which have all transferred such lands to community bodies along with the right to lease, sell, subdivide or retain these as collective private properties. It is notable that where this opportunity arises the majority of communities determine to keep these as shared properties rather than subdivide among the shareholding families.

8 The commitment to redistribution has not always been lasting

Radical reforms are always vulnerable to political change. As noted above, at times new administrations have actually reversed redistribution, such as restoring ownership of taken lands to landlords in Egypt, Syria and Romania, and in some areas in Colombia, Nicaragua and Chile. At other times redistribution has slowly dwindled as objective, leaving plans truncated and vulnerable to
slippage into old ways and even neo-feudalism; this for example has been the case in Afghanistan, in some parts of India, Bangladesh and Nepal. Additionally as also noted above, the imposition of IFI structural adjustment, credit reform and neoliberal policies has at times derailed redistributive reform or set up contradictory parallel programmes, the case in Brazil, Venezuela, South Africa, the Philippines and Bolivia, all of which are in the process of reassessing failed strategies.

9 Large estates are not reappearing in post-feudal societies

Most reform states retain ceilings on holding sizes and interestingly, often begin to enforce this more, not less, successfully with the passage of time. Actions to prevent and punish idle lands are also more, not less enforced over time. Most successful reform states eventually focus on consolidation of parcels to enhance size utility and still periodically amend ceilings to adjust to viable farm size in line with technology and labour changes (e.g. Taiwan and Japan). Failed reforms tend to turn a blind eye to rising land hoarding through various strategies.

10 Feudalism cannot be removed without redistribution

Redistributive reforms have been successful in removing traditional landlordism and especially the power over property, social and economic relations which feudal landlords have historically enjoyed. These powers pass however into government hands and which in some cases retains strong social class links with the landlord class and may favour their interests. This is widely seen in South Asia.

Where reforms have been limited to certain sectors or regions of the country, exempting most powerful and state-aligned landlords from redistribution, they are today beneficiaries of substantial agri-business developments. This has been the main case in Latin America, excepting in Colombia, Ecuador and Venezuela where reform turned feudal elites successfully into off-farm entrepreneurs as did Taiwan, Japan and South Korea in the 1940s. Bolivia leads the way in Latin America at this time in challenging the existence of vast idle estates (Annex A).

Landlordism in the sense of continued tenancy and usually indebtedness has been less evenly removed and remains in place so long as genuine redistribution to tillers does not sufficiently occur. India, Bangladesh and Nepal are examples.
11 Holding on to redistributed land is often problematic for the poor

This has proved mostly the case where beneficiaries have had to pay unreasonably for the land granted or acquired or are insufficiently supported with other means of production (seeds, fertilizer, fair markets for their products, etc.). Distress sales and polarisation result.

Or, as farms become smaller with sub-division at inheritance and with population growth, noodle-strip farms (as they are called in China) simply become less viable and prompt abandonment or transfer. Mismanaged decollectivisation has at times generated a period of rapid differentiation and landlessness. This has been the case in some communes in China during the 1980s and in some former Soviet Union Republics. Liberalisation, including the right to trade new rights has the same result or triggering some landlessness.

However, care has to be taken in interpreting these trends. Research shows that in Vietnam, Armenia, Ethiopia, Chile, Japan and Taiwan that a significant number of sales are by better-off farmers who sell their land to capitalise on more lucrative off-farm or urban opportunities (Annex A). This suggests that the economic transformation effect is being realised. At the same time China’s salutary experience particularly in peri-urban rural zones suggests that proactive protection against unjust or involuntary purchases is needed.

12 The beneficiary profile of redistributive reform is often disappointing

In many reforms beneficiaries have not been the poorest or most exploited in the rural sector but those who already own land or had secure if exploited farm work. Gains have also at times been captured by urban and rural middle classes who also benefited from the removal of traditional elites and been permitted to acquire holdings. More positively, there is evidence that women and specifically poor women are a more significant beneficiary group than planned or anticipated (best documented in India).

13 The state has been a major beneficiary of land reforms

Redistribution through collectivisation has often delivered the entire productive base into the hands of the state, although often since modified (e.g. China, Vietnam and Cambodia). Additionally, even where redistribution was not through collectivisation, nationalization of non-cultivated or cultivable lands such as pastures, forests, fishing swamps, and wastelands has delivered these assets to the state. This has been so even in best practice cases like Taiwan and Japan.
As well as depriving communities of their rights in situations where these lands were treated as local commons, these new State/Government/Public Lands have then quite often fallen or been directed into the hands of the already better-off, or in more recent decades into the hands of foreign enterprises. This has been prominently the case in Bolivia, Cambodia, Colombia, Nicaragua and the Philippines (Annex A).

As the scope of land-based productivity and income-generation diversifies (tourism, forest exploitation and livestock developments) the poor generally have less rights and sometimes access to these assets than they had 100 years ago.

A secondary effect of dispossession of community properties has been to eliminate such local controls as existed over the use of these lands and to send them into classical open access. On the grounds that these resources now belong to government, local communities no longer bother to regulate access, and instead increase free rider behaviour because they are public/government property. Sharp increases in encroachment and degradation have been common.

Since the 1980s, governments around the world have been forced to return these lands to community jurisdiction to halt degradation. Often this restitution is partial, incremental, bureaucratic and costly, and withholds the ultimate incentive to conserve the estate – ownership. However this is now quite widely being awarded in Latin America and Africa, where restitution of ownership coincides with new treatment towards customary land rights.18

In Asia restitution to community jurisdiction is generally limited to management and use rights and delivered to user groups, not whole village communities. This frequently sits uneasily with past patterns of inclusive local ownership and control. It may also run contrary to emergent customary land demands. There are also plenty of signs that modern states do not easily surrender jurisdiction let alone ownership over forests of highest value.19

14 Redistributive reform can reduce poverty but does not always do so

Limited coverage of the reform, poorly constructed mechanisms and a lack of enforcement are usual causes of cases where beneficiaries have actually

18 There is a massive literature on this and the subsequent community forestry movement around the world. Reference to www.rightsandresources.org is an easy entry into the subject.

19 See above footnote.
become poorer through land reforms, including as a result of uncontrolled evictions and homelessness by landlords (e.g. Bangladesh, India). In general, direct beneficiaries of reform do much better than non-beneficiaries and have higher incomes (documented in the Philippines, Brazil, India and Bolivia; see Annex A).

Redistributive reform does not often remove the urban-rural difference in incomes. In most countries where redistributive land reform has occurred rural households remain poorer than urban households. 55% of Latin American households fall below the poverty line as compared to 34% of urban households, even though most of the continent (or more accurately, parts of most countries) have been subject to land reform.

15 Agricultural production sometimes fails to rise with reform

Agricultural production has not consistently risen with redistribution. The case of Taiwan (1953-1970), Chile (1965-1970), Egypt (1952-1962) and certain states of India are commonly cited as having produced surges in agricultural production and thence overall growth. Karnataka, Kerala, Tripura, Andhra Pradesh and especially West Bengal are among those claiming an increase in physical capital (land and equipment) and human capital through redistributive reforms, as well as a rise in food grain production, per capita calorie intake, agricultural wages and off-farm enterprises. These achievements, the literature suggests, may be accounted for only partially by increase in supply of credit, improved seeds, irrigation and roads, as these were also increased during the same period in other states where redistribution of land rights did not take place.20

16 How a reform is implemented is a main determinant of success

However it is usually the case that a successful and well-implemented distributive reform is also accompanied by other well-implemented reforms and unpacking single drivers is difficult.

As one of the more broadly successful agrarian reforms up until the present, the Taiwan case is particularly worth examining, as outlined in Annex A. This case demonstrates that when a reform is strategically structured and enforced, farm productivity does rise and does trigger off-farm enterprise, and thence contributes to growth.

17 Poorly executed reform may actually depress growth

This was the case in China and Vietnam during early periods of collectivisation which said more about the mode of redistribution than the potential impact of reforms. It was also the case in Japan in the first couple of years before acknowledgement of the importance of providing new farmers with inputs and adopting supporting price controls was recognised. More broadly, partial, weakly-driven and poorly executed reform is amply shown to make the poor worse off. In many countries attempting reform, tenants in particular have found themselves worse off, the case throughout South Asia.

18 Tenancy reform may make or break success

Ambivalence as to whether or not the reform seeks to abolish tenancy altogether in favour of owner-operated farms has plagued some reforms (e.g., India).

On the whole securing redistribution through partition of existing estates among tenants and workers has been the most successful route of redistribution in the direct transfer sector (i.e. excluding collectivisation).

Providing new farms to the landless on often marginal public land and delivering surpluses to new farmers has been more erratically successful, and additionally, sets a precedent for further encroachment each generation, as the route for seeking land.

Recognition that even small farmers continue to need to enter sharecropping contracts to overcome credit and input problems and insufficiency of land granted has been slow and poorly provided for. Innovative rental developments in Latin America\(^{21}\) have not been matched by developments in Asia.

19 Speed is of the essence

The longer the delays in implementation, the more room for avoidance by landlords, manipulation by allied officialdom, and pleas for resumption by reluctant landlords. Redistribution in East Asian states (where most success has been experienced) has always been achieved within a few years, not decades.

20 Grasping reform as evolutionary process appears to be important

The objective of reform is not to rigidify the farming population or farming in a fixed pattern or mode of production. It does not aim to keep all farmers on

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\(^{21}\) Such as the Landless Workers Consortium to Rent Land and the Rural Leasing Exchange in Brazil and group rentals in Honduras.
the farm but to ensure that those who do stay cultivate have secure, sufficient and equitable access to the land and have the means to increase production and income. Even where this is achieved, inter-generational change/population growth, education and off-farm opportunities will see a continuing reoccurrence of land shortage and landlessness. Successful reforms remain vigilant as to trends towards involuntary landlessness and keep this in check through a range of increasingly sophisticated stratagems (see Taiwan, Annex A).

21 Everywhere land reform has had a major politicising impact

Reform everywhere leads to clarified and heightened politicisation and demand by majority poor populations in agricultural economies. This has been so, irrespective of success or failure. Politicisation around the issue now leads slowly but surely towards demand-led reformism in the 21st century. Although this is most actively the trend in Latin America, it is also seen in Africa (e.g. Liberia, Mozambique) and Asia (e.g. in the recent Indian indigenous peoples’ land marches and protests). In China, most of the 87,000 social unrest incidents in 2005 had land rights issues at their core and have been instrumental in coercing changes by the central leadership (Annex A).

22 The greater the involvement of beneficiaries the greater the success

Reforms report most success where implementation is sufficiently decentralised to enable beneficiaries to become directly involved (the case in Taiwan, Japan, South Korea, China, Vietnam, Mexico, Cuba, West Bengal and Kerala states in India). This has offered most scope for changes to be driven from practical realities. Decentralisation to local authority bodies has had less success where these are not directly accountable to community members or are aligned with local landlords.

23 There is noticeably little variation in the instruments of redistributive reform

Common instruments include imposition of ceilings on individual holdings, expropriation of above-ceiling surplus with redistribution to selected beneficiaries, reform in tenant conditions, increasing availability of cheap credit, providing subsidized and more accessible inputs and especially fertiliser and high yielding varieties of staple crops and introduction of seeds for new crops, farm wage regulation, rural infrastructure developments and especially water and roads, cooperative or state organisation for product marketing, use of taxation to limit idle land and speculation and introduction of new farming regulations.
It is variance in the use, comprehensiveness, speed of implementation and especially enforcement of these instruments that lead to most differences in success including how far beneficiaries are able to become independent and market-competitive producers. Most variation is seen in -

a. the level at which ceilings are set and if and how these are enforced  
b. whether and at what rates expropriated property is paid for, with most success where payments are well below market value and not paid in cash but redeemable in enterprise bonds  
c. whether landlord estates are subdivided among tenants and the speed and efficiency with which this is achieved and the level of debt incurred by tenants through allocation  
d. the extent to which credit is available in practice, is genuinely cheap and is free from dependence upon farm ownership  
e. the level of investment made in the agriculture sector and how far it is targeted to reform beneficiaries, and  
f. the extent to which redistribution is geared to landless or land poor tenants.

Conversely, shortfalls are common and with common causes across states. These include

a. provision of too small lands to the very poor, often on marginal land and in areas where they cannot supplement income through casual labour  
b. putting tenants into new debt by requiring high payments for land  
c. increasing rather than reducing vulnerability to eviction by uncertain tenancy reforms  
d. failing to extend access to credit  
e. limited or too regulated crop choice  
f. limited improvement in input and market access, and  
g. failing to provide beneficiaries with other than land access.

For example, un-payable loans and inadequate inclusion in input and marketing schemes helped make redistribution un-lasting in Bangladesh, parts of India, Afghanistan, Egypt and Zimbabwe. Insufficient cheap credit has afflicted reforms in Bolivia, Peru, Chile and the Philippines, in all cases resulting in significant numbers of defaults and repossession.

24 Removal of room for elites to manoeuvre is a main predictor of successful land reform

The will and capacity to enforce redistribution, to see it swiftly through and to invest fully in the programme descend from political conviction.
KEY FACTORS IN TAIWAN’S SUCCESSFUL REDISTRIBUTION

1. Rapid implementation limited resistance and its organisation. The reform was given maximum priority, in effect took the country by storm and was implemented in a matter of five years, start to finish.

2. Planning was impeccable; each stage was carefully mapped out. Investment was substantial, both financially and in supporting manpower.

3. Tenant communities themselves were made integral to implementation exercises; it was not left entirely to bureaucrats.

4. The arriving Kuomintang government was displacing departing Japanese colonists and additionally, had no links with the indigenous large landlords; they were able to implement the reform with conviction; landlords were discredited and impotent.

5. From the outset redistribution was packaged with immediate support to farmers with credit, fertilizer, seeds, assisting price regulation and marketing assistance.

6. Taiwan understood that peasants should not have to pay for the land at its real value; this would just defeat the reform by burdening them with debts (oppressive rents converted into oppressive interest payments).

7. Taiwan grasped a fundamental socio-economic truth, that giving landlords full compensation for their land in unhelpful to resolving founding social issues of class and wealth; to do merely shifts land capital into other capital without altering the economic and power relations of landlords and peasants.

8. The Kuomintang coupled the land reform with an intelligent industrial policy. The ‘light industries’ were indeed light given the level of Taiwan’s economy at the time but wisely worked towards import substitution, producing items like bicycles, shoes, clothing and textiles and building from there. Land was also taxed at its full rental value to discourage low productivity.

9. Although redistribution at scale ended, it has continued in different forms since. Additionally, focal agricultural programmes have sustained and increased farmer organization, agricultural extension, credit, inputs and marketing support. Further, ceilings and programmes have been flexible, responding to changing conditions. The most recent programme has seen consolidation of parcels and assisted investment for new technologies.

10. Taiwan has never lost sight of the fact that whilst agriculture continues to provide a smaller and smaller proportion of GDP given the massive surge of industrialisation, it continues to absorbs otherwise unemployed labour, maximises use of rural lands, protects the environment and most of all, provides food security.
Political will itself has usually been less a matter of which party is in power than the degree to which it is authoritarian. As observed above, reforms under capitalist systems have been as successful as those under communist states where a similar level of autocratic coercion has been in place; compare for example Taiwan, Japan and Korea (under real or de facto American military rule at the time) with USSR and Cuba where reform derived from militarised communist regimes.

25 The extent of popular support has also played a role

Popularly based insurgencies (e.g. Peru, El Salvador), revolutionary peasant-based regimes (e.g. China, Vietnam) have had success. So too have the democratically-elected governments of Puerto Rico, Guatemala, Venezuela and Chile, although in a less lasting manner. Autocracy may not be a clear precondition for advancing redistributive reform but is clearly a helping hand – and facilitates the speed and investment needed to make it work.

Many of the above lessons are evident to different degrees in successful reforms. Box 3 provides reason for success in Taiwan, one of the most successful reforms.

IV. CONCLUSION

In brief, these broad conclusions may be drawn –

1. Redistributive reform has not been uniformly successful.

2. It is significantly more difficult to apply wholesale redistribution in democratic states than in autocratic conditions. This has two elements: (i) constitutions tend to protect the status quo including protection of existing private property hindering expropriation of above ceiling surplus without paying for it at open market values; and (ii) the mobilisation and alignment of elites with political forces is hard to overcome and together they may have the political and allied economic resources to pre-empt reform being fully applied.

3. Other routes must be found - and are being found to secure equity in landholding – most notably in people-led and demand led changes in distribution. Implementing reforms without popular support and participation are decreasingly viable or even countenanced – and need not be so given the rise of transnational social movements and activism in
civil society towards empowerment, representation and organization of the poor.

4. Redistribution cannot and should not be expected to perform agricultural or economic miracles on its own. Acquiring land is not enough to raise production, make new or small farmers competitive in the market, or provide the capital needed for developing off-farm economies or industrialisation. The agricultural sector itself needs to be reformed and redistribution strategies purposively structured to send inactive wealth off the farm. It is usually not that land reform failed the ambitions of the state but that the state failed land reform.

5. Growth without redistribution is possible. Equity with growth in agrarian states probably is not.

6. Success in redistribution has been characterised by these five conditions: sufficient political and/or public will and authority to enforce change and prevent evasion; compensation and land award mechanisms at well below market values; sufficient forward planning and investment to enable comprehensive and speedy implementation; sustained beneficiary support; and nesting of redistribution in a well-thought through agriculture support programme and linked industrial policy.

7. The purpose of redistributive reform is to change the structures, conditions and inclusiveness of rural production as a platform for more equitable social and economic growth, not to create another version of stagnation. Demands will and should change with its success and with changing population dynamics. Most modern farmers want and need to adopt multiple strategies for livelihood, including value-added activities, diversification and off-farm contributors to income. These need to be considered in structuring redistribution for the longer-term.

8. Redistributive reform is not a relic of the 20th century. As well as popular demand for fair access to land in agrarian societies, there is new acknowledgement that it will be difficult for most of the burgeoning poor to move out of poverty without access to secure farmland and shelter, particularly as industrial employment is unlikely to rise at the rate needed to absorb landlessness.

9. There are changes in the focus and routes of redistributive reform. Taxation is being put more fully to work to coerce equity. Women have been marked out as an important target group on the grounds that their landlessness deprives not only themselves but their children of asset advantage and
livelihood security. Mechanisms for accessing land on a sustainable basis is widening into promotion of secure rental markets as a corollary route to outright land to the tiller, along with provision of peri-urban homesteads in favour of farms in conditions of absolute arable land shortage. And the source of distribution of land has steadily shifted from the private sector to public lands.

10. The right to land has moved beyond its anti-feudal origins into a basic human right in agricultural societies. Communal rights and access systems are re-emerging as a viable modern property regime. Reform in the 21st century is moving beyond the farm into considerations of how non-farm lands and especially forests, pastures, fishing grounds and minerals should be more fairly tenured. Urban property rights are also coming strongly to the fore. A modern land reform is unlikely to succeed without a broadened agenda and a more people-driven approach.
Chapter Two

RURAL LANDHOLDING IN NEPAL
OVERVIEW

1. As preface, exact numbers of rural landless and a true picture of farm distribution are not reliably known. Surveys are out-of-date, samples with one exception tiny, and results contradictory, particularly between information compiled from land registers and data from agricultural censuses. Concealment of real holding size compounds unreliability. Added to this are rapidly changing circumstances during and after conflict, including high levels of migration and urbanisation.

2. Given that the legal limit of landholding has been set at 7.3 ha (Tarai) the range of rural holdings is not extreme, officially. Reform gives the appearance of evening up holdings with a decline in concentration from 0.64 to 0.49 between 1961 and 2001. Holdings have nearly doubled in number over the same period (1.5 to 2.8 million). Average holding size has fallen from 1.09 ha to 0.8 ha. One third the number of holdings are larger than 3 ha today compared to 1961. The proportion of marginal holdings has declined by 9%. The proportion of households now in the small farms class has risen by 12%. These data suggest reform has had a strongly positive effect. However, without comparative data on the proportion of absolute rural landless (around 24% today) and who new farmers are, it is not known how far these changes reflect intergenerational subdivision which would have occurred without reform, are negative responses to reform in the sense of subdivision for the purpose of concealment, and/or reflect a genuine and inclusive redistribution.

3. In any event distribution remains highly skewed, with 7.5% of farmers still owning nearly a third of the farming area and nearly half of all holdings (47.7%) too small to enable the family to meet subsistence requirements (less than 0.5 ha). At least another 10% of rural households have absolutely no home or land at all (half a million rural households). Together, nearly 60% of rural households are functionally landless. Marginality in farming is a major and majority issue in Nepal, sustaining high out-migration and emphasising the need for re-examination of strategies around distribution and intensification of production.

4. Although unevenly addressed as cause by government and assisting donors, land poverty and socio-economic poverty positively correlate as expected. Caste and ethnicity, and particularly in the Tarai strongly correlate with levels of landholding and landlessness; high castes own more and rent in less. By agro-ecological zone, inequity in ownership is greatest in the Tarai where most large holdings are found and most outright landlessness exists. This suggests that should redistributive reform be again advanced, the Tarai must be the focal area.

5. While women traditionally own little or no land and especially as legally recorded, this is suddenly changing with introduced waiver of registration fees when land is recorded in the name of a woman. The proportion of such transactions doubled in the last fiscal year. Uptake may reflect a genuine change
The proportion of tenants to landlords has declined sharply over the last half-century. This could reflect a real decline in the proportion of landless (historical data are not available) but more likely reflects the reform-induced change in status of tenants as now workers on annual contracts. These tenants/workers farm others’ land under decreasingly stable conditions due to landlord avoidance of grounds through which tenants were enabled to claim a share of the land through new legal provisions in 1997, an opportunity now closed. Most concealed tenancy is in the mid-western and far western regions. In any event absolute numbers of tenants have as sharply risen. Registered rural tenants number around half a million but there are reasonable grounds for accepting there are three times this number of farmers operating as tenants, 1.5 million households or nearly 30% of all rural farming households.

Bonded labour, the most exploited form of tenancy, is the condition of an estimated 80,000 – 100,000 households, although such arrangements have been legally outlawed a number of times since the 1950s and most explicitly and recently in 2002. Around 12,000 former kamaiya in western Tarai have received marginal plots of their own under the reforms.

Private land is expanding in Nepal and currently comprises 41% of the total land area according to surveyed private land holding, not the 20% conventionally quoted. This raises query again as to how genuinely ceilings have been enforced. Over 2.6 million ha is uncultivated. While a substantial part is left fallow due to the terrain and soils, it is widely acknowledged that a large part of cultivable land is left idle rather than rented out to farmers who might then claim partition rights.

Only 48% of all households have a registered house or farm entitlement. It is concluded that around one million of the remainder are without any property of their own and two million other households have unregistered but long-term occupancy on land defined as public land or registered under the name of landlords. These are poor and very poor, often finding themselves excluded during survey and registration exercises of the last 30 or so years.

The land administration system is technically devolved to the 75 districts but policy decisions remain centralized. The Ministry of Land Reform and Management is in practice a ministry of land administration, preoccupied with survey and recordation. Extraordinarily, no records are compiled as to how exactly the status of outputs from reforms, or parallel historical allocation of plots to squatters, a common feature of opening up the Tarai during the 1960s to 1980s. This is ironical for it could be the case that more poor and landless than officially known have in fact been granted lands over the last half century. Both courts and land offices blind with fees and paper, efficiently excluding the poor.
I. LAND DISTRIBUTION

1. It is difficult to gain a consistent or accurate picture of landholding today

First, this is because there is so much transition at this time. This includes a sharp rise in urbanisation following conflict, continued in-country migration from hills to Tarai and beyond, the fact that many families have one foot in the countryside and one foot in town along with a rise in multiple income generation by rural families making it difficult to determine land holding patterns as well as how much arable land is ‘enough’.

Second, the data are outdated, mostly from 2001, in circumstances where even natural trends will have altered the pattern of landholding quite aside from changes triggered by conflict.

Third, the data are deceptive. At first they seem rich and with repeated use in reports take on a patina of fact. However these ‘facts’ are unreliable. The four main sources have different sampling frames and collect data in different ways and from different sources. Landlessness, holdings and sufficiency of land are also defined differently (Box 4).

There are discrepancies between these sets of data but the most startling is between total landholding as divined by the Agricultural and Population Censuses and as recorded in land registers and survey records by the Ministry of Land Reform and Management. This affects mean holding sizes, tenancy per holding and levels of fragmentation (see later).

2. The distribution of arable land holding is skewed — but not as much as it was

Legally the range is limited by ceilings, at most 11 bigha or 7.3 ha in the Tarai. This is dramatically lower than pre-reform distribution in 1951 at which time large holdings in the Tarai could amount to a 100 ha or more. Nepal never possessed the vast 

hacienda of Latin America (and which still today amount to 50,000 ha for cattle ranches and agri-business enterprise in that vast continent).

Still, a sharp decline in range and thus inequitable distribution must have occurred in the arable farming sector – if the ceilings have been adhered to.

The existence of extremely large arable farms does not appear in the 1961/62 NSAC sample census, carried out prior to imposition of ceilings (1964) but not

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22 Regmi 1977, Basnet 2008, and Nanda Shrestha 2001 provide examples, particularly for Rana family members.
prior to a decade of commissions about tenant conditions, significant alteration in the tenure regime, and an announcement in 1960 by the leader of the Nepali Congress Party, B. P. Koirala, that land must be placed in the hands of tillers. Distribution was clearly skewed; the 1961/62 survey indicates that while only 3.6% of holdings were 5 ha in size or above, they absorbed 34% of the

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**BOX 4**

**MAIN SOURCES OF DATA ON RURAL LANDHOLDING**

*National Sample Agricultural Censuses (NSAC)* held every decade but with a very small sample (3.7 percent of total holdings in 2001) focuses on holdings rather than holders (although the two are usually synonymous) and excluded those without holdings (i.e. the landless) and the extreme land poor – but who may own shelter.

*National Population Censuses (NPC)* held every decade, aim to cover 100% of the population and the information is self-reported to enumerators. Only the last NPC included a question on landholding, which has been useful but is limited limiting comparative time series. The Census applied its question on landholding uniformly across urban and rural areas making the number of rural households without land uncertain.

*Nepal Living Standard Surveys (NLSS)* conducted in 1995-96 and again in 2003-04 also provided landholding data in the course of assessing poverty. The sample is tiny; 3,912 households in 2003-04.

*Ministry of Land Reform and Management (MLRM)* data is owner-based information derived from land registers, transaction and other records collated in district land revenue offices and reported annually to the Ministry. This should be more accurate than it is; the worst difficulty is that some districts report incremental changes for that year while others report accumulated figures over some years. There is also discrepancy in the use of land measures (especially between bigha and hectares) also occurs.

The Department of Survey provides information on holdings sizes and parcels. The date of survey varies widely and for some districts is more than a decade old. Subdivisions since are thus excluded. Additionally there is much evidence that survey did not always record existing occupancy by poorest households who could not pay ‘fees’. Although the most comprehensive, MLRM data also suffers the disadvantage of excluding those whose lands are not registered and those who have no land at all. It is also far from sure that listed holdings and owners are not double entries under different names given the known lengths to which some large owners have gone since the 1960s to conceal real farm size above ceilings laid down in 1964 and 2002.

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23 A holding in NSAC is an agricultural unit satisfying one or more of the following: an area under crop of no less than 0.0135 ha in Tarai and 0.0127 in the hills and mountains; keeping two or more head of cattle or buffaloes, keeping five or more heads of sheep or goats and/or keeping 20 or more poultry.
total holding area (Table 3). Two main sources for holding information, Regmi (1977) and Shrestha (2001), give plenty of examples of very large holdings, particularly in the Tarai.

It will also be the case that interventions in 1957 around Birta estates had taken their toll, removing large forested areas from estates and subdividing farmland among family members or sometimes tenants (see Chapter Three).

3 The reform gives the appearance of having a major impact on distribution

Agricultural sample surveys (NSAC) show a decline in the land concentration index from 0.64 to 0.49 between 1961 and 2001 among agricultural holdings (i.e. excluding landless households) (Table 3). The index based on the more inclusive 2001 Population Census (NPC) places the rural land inequality coefficient as 0.536 (Human Development Report 2004). Standard of living surveys in 1993/94 and 2004/05 showed a similar decrease in concentration. In the latter (but with a tiny sample) 48% of households had less land than in 1994, and mainly in the Tarai, suggesting de-concentration.

The proportion of holdings above 5 ha fell from 3.6% in 1961 to 0.7% in 2001 (Table 3). The proportion of marginal farms declined from 56% to 47%. Middle sized farms increased as a proportion as did small farms (from 0.5 ha to under 2 ha, from 31% to 45% of holdings). When the sample range examined is increased to the class of 0.5 ha to less than 3 ha, the proportion of holdings can be seen to have risen from 36% to 50%. This suggests a strongly positive effect

| Distribution of Holdings and Area (Ha) between 1961 and 2002 in Percentages |
|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| <0.1           |               |           |               |           |               |           |               |           |               |           |
| 0.1-0.2        | 56.2          | 11.9      | 62.7          | 13.8      | 50.3          | 6.6        | 9.8           | 1.5        | 10.4          | 1.9        |
| 0.2-0.5        |               |           |               |           |               |           |               |           |               |           |
| 0.5-1.0        | 18.8          | 12.2      | 14.9          | 12.1      | 16.3          | 10.8       | 26.3          | 19.2       | 27.4          | 24.2       |
| 1.0-2.0        | 11.9          | 15.4      | 11.1          | 17.4      | 17.3          | 19.9       | 19.6          | 27.6       | 17.6          | 29.8       |
| 2.0-3.0        | 5.2           | 17.7      | 5.0           | 13.4      | 7.2           | 15.4       | 6.2           | 15.4       | 4.7           | 14.0       |
| 3.0-4.0        | 2.7           | 8.8       | 2.3           | 8.8       | 3.5           | 10.8       | 2.2           | 7.8        | 1.5           | 6.6        |
| 4.0-5.0        | 1.5           | 6.2       | 1.2           | 5.7       | 1.9           | 7.7        | 1.1           | 4.8        | 0.6           | 3.4        |
| 5.0+           | 3.6           | 34.1      | 2.8           | 29.2      | 3.4           | 28.9       | 1.5           | 13.9       | 0.7           | 7.3        |

Concentration index

|                  | 0.64 | 0.63 | 0.65 | 0.52 | 0.49 |

of the reforms over the 40 year period bringing most farmers into the middle range of holdings.

4 Validating genuine equalising trends is difficult

These factors make it necessary to be cautious in asserting de-concentration has definitely occurred as the data above implies –

a. The landless are excluded in the agricultural sample census time series and no information exists as to their proportion prior to the 2001 national census (NPC)

b. The sample on which the holdings data is based is very small (e.g. 3.7% in 2001)

c. It is not known to whom distribution has accrued; that is, how far redistribution has occurred within the family in respect to larger holdings; and

d. The agricultural time series data is not uniformly supported by other surveys; for example, Nepal Living Standard Surveys conducted in 1995/96 and 2003/04 report an increase in the percentage of total farm holdings which operate less than 0.5 ha land from 40.1% to 44.8% in this period, whereas the above Agricultural Survey data shows a strong decline.

5 There is only fragmentary evidence that more households than in the past own land

The rise in numbers of registered holdings confirms a rise in number of owners between 1961 and 2001 (from 1.54 million to 2.8 million holdings). However it is impossible to know how much of this increase is (i) a result of reform, (ii) reflects continuing subdivision among sons (and recently daughters) that would have occurred without the reform, (iii) reflects a purposive redistribution among the better-off to other better-off to conceal large holdings, or (iv) if this increase in holdings represents the entry of landless households into the land owning cadre.

It is also difficult to decipher where the rise is the result of regularisation of squatter or so-called spontaneous settlement, which was continuing to occur throughout this period (as discussed in Chapter Three).

One survey suggests landless were beneficiaries of reform or parallel regularisation processes; a survey in six districts in Mid-Western Nepal shows
that whereas 34% of respondents owned land before 1996 this had more than
doubled to 87.4% in 2006 (INSEC 2007). However the survey was located in
areas which had been subject to Kamaiya-related redistribution, an important
initiative but which had a limited base (12,000 households) and is not reflective
of all rural Nepal.

6 Most rural families do not have enough land to even subsist on

Whatever the distribution among farmers and suggested positive trends, a
startling proportion of rural households still do not have enough land to live
on.

Table 4 shows that 47.7% of holdings are marginal, too small to meet even
subsistence. Marginal farms are defined by the Agricultural Census Surveys
(NSAC) as a holding under half a hectare (0.5 ha, or 30 kattha or 0.75 bigha).
Marginal farms in fact averaged only 0.24 ha or 7 kattha in 2001, certainly not
enough to live from.

The NSAC and National Population Census (NPC) use different measures
to adjudge land sufficiency which makes comparison of their data difficult.
Definition of a small farm is starkly disparate, up to 3 ha for NSAC but less than
1 ha for the Population Census. The definition of marginality is less stark: a
marginal farm under the NSAC is less than half a hectare while less than 0.4 ha
is marginal for the NPC (Table 4).

An extraordinary 58.97% of the total population according to the NPC are
functionally landless in terms of agriculture (less than 0.4 ha). If the NSAC
figure of 47.7% with holdings under 0.5 ha, it might be concluded that 11.27%
Chapter two: Rural landholding in Nepal

of the total population are entirely without land, a house, homestead plot or farmland. NPC figures suggest double that figure across the country. Intensive but highly localized surveys confirm these indications that the majority of rural families are landless or have insufficient land to live on. NSEC review of 80 VDCs in 20 districts for ILO in 2002 showed that 63.2% owned some land, 36.8% owned no farm land at all and 25.3% rented in land. Only 7.5% of 5,000 households had grains to last a year. Over half had grain to last 3 months. 73.9% make up the difference in food needed through wage labour (ILO 2003). Over half the sample provided agricultural labour to other farmers.

The INSEC survey of 24 Village Development Areas in Mid-Western Region in 2006 found that 9.8% had absolutely no land, 0.2% of households had a house (ghaderi) but no farm land (arable landless) and another 12.6% had access to land but only through renting in land. Altogether these landless households were 22.4% of all households in the 24 VDC areas (INSEC 2007).

A survey by CSRC in 2003 found that among 32,855 households surveyed in 11 Village Development Areas in eleven districts in four regions 26.73% of households had either no land at all (11.58%) or only a house (ghaderi) (15.15%) (CSRC 2003).

These suggest that in rural areas a figure of around 10% is a conservative estimate of the proportion of absolutely landless.24 As we know from the Agriculture

---

24 Reports vary widely in the extent of landlessness reported. For example, ADB, DFID & The World Bank 2006 report 16% landless but it is not known on what basis landlessness is defined.

---

<table>
<thead>
<tr>
<th>National Agricultural Sample Censuses Measure Used</th>
<th>Finding 2001 % holdings</th>
<th>Measure used by UN Human Development Report 2004 Finding 2001* % households</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marginal</td>
<td>0 -&lt;0.5 ha</td>
<td>(47.7)</td>
</tr>
<tr>
<td>- no farm land</td>
<td>0 ha</td>
<td>0.8</td>
</tr>
<tr>
<td>- semi landless</td>
<td>&lt;0.1 ha</td>
<td>7.7</td>
</tr>
<tr>
<td>- marginal</td>
<td>0.1 ha - &lt;0.5 ha</td>
<td>39.2</td>
</tr>
<tr>
<td>Small</td>
<td>0.5 ha - &lt; 3 ha</td>
<td>49.4</td>
</tr>
<tr>
<td>Medium</td>
<td>3 ha - &lt; 5 ha</td>
<td>2.1</td>
</tr>
<tr>
<td>Large</td>
<td>5 ha +</td>
<td>0.8</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Based on Population Census Data 2001.
Census data, another 47.7% have marginal holdings. Therefore around 58% of rural households are functionally landless (less than 0.5 ha) which coincides well with Population Census figure of 59% albeit inclusive of urban dwellers.

7 2.7 million rural households are functionally landless

In numbers, absolute landlessness at 10% of the rural population amount to 2.3 million people or 481,938 households using current population projections. Using the conservative NSAC figure of 47.7% marginal farmers, these add another 11.2 million people or 2.3 million households. Together they amount to 2.7 million rural households which are functionally landless in agriculture.\(^\text{25}\) These are minimum figures. Real landlessness and land poverty could be much higher.

8 Marginality may be too conservatively defined for modern farmers

The picture gets worse when farms which are able to provide a little more surplus than subsistence are considered, enabling families to buy basic goods and reduce their debts. A one hectare farm is the minimum for this (30 kattha).

At least seventy five percent of all holdings are less than one hectare (NSAC 2001/02).

When an estimated 10% absolute landless (no holdings) is added to this group, then an extraordinary 85% of households are land poor. Again, these are minimum figures.

These statistics help explain –

a. the continued rates of out-migration within and beyond the country, on a seasonal basis or otherwise;

b. urbanization, involving full or partial removal of the family from farm to town;

c. the active search for additional sources of income beyond the farm, prominently including unskilled daily wage work;

d. the continued high rate of renting-in additional land on a sharecropping basis (see below) and

\(^\text{25}\) These figures take into account population growth to an estimated 29.519 million households and assume a decline in the proportion of the rural population with faster urban growth since 2001 from 88% to 80%; that is, a rural population of 23.615 million people or 4,819,388 households (using 4.9 members of a household).
the dual farming arrangements of so many farmers as both sharecroppers and labourers.

9 Land poverty is a genuine and majority issue

Whichever way it is examined, most rural Nepalese are marginal to landless farmers in 2008. Even ‘smallholding’ is a glorified description for their subsistence. This places these facts in perspective for later discussion –

a. the current ceilings for landholdings are much higher than necessary if even the more generous one ha per family rule is applied. One ha is under one third of the ceiling set for hill and mountain areas and under one sixth of the ceiling set for the Tarai;

b. even a holding of three hectares and above, such as enjoyed by the privileged minority of 100,000 or so households (97,172 holdings in 2001/02) is shown to be quite large in the Nepal context, let alone those 4,000 or so holdings above 10 ha;

c. the area required to provision 2.7 million rural households who have less than 0.5 ha could be around one million hectares, or around one sixth of Nepal’s total private holding area in 2008; and

d. in light of the estimated high levels of idle land (see later) this may not pose as great a burden as may first appear – and without dipping into public lands.

10 Land poverty in Nepal is no worse than in the region as a whole

Data for Nepal’s neighbours share the same constraints as to definition of absolute landlessness (including homelessness in rural areas), arable landlessness (a house but no farm) and functional landlessness (not enough land to live on even for subsistence). With this in mind as well as the uncertainties surrounding Nepal’s outdated data (2001) it may be concluded that absolute landlessness and functional landlessness are roughly similar across the region.

As outlined in Annex A, Bangladesh is known to have 52.14% of its rural population holding less than 0.2 ha of land or around 2.1 million households. Pakistan, where no reform has been undertaken, currently runs at 54.55% for a similar measure. In India, 43% of rural households have no land or less than 0.1 acre (0.04 ha). Marginal and sub-marginal farms in India now number 60% of all holdings, up from 47% in 1952 compared to Nepal’s NSAC figures 2001 that 47.7% of rural holdings are marginal and sub-marginal.
11 Land poverty is both correlate and a cause of poverty

The persistence of poverty is a grave concern in Nepal which ranks 138 among 177 nations in the International Human Development Index. Much is made of the fact that the proportion of households which have fallen below the poverty line has declined between 1995 and 2003 from 42% to 31% (NLSS 2003/04).²⁶

It is known that rural areas remain poorer than towns and cities in Nepal; that wealth varies by region and zone, and by caste and ethnicity (Box 5).

Even though the total proportion of households below the poverty line has fallen, inequity in incomes has increased between urban and rural areas, among regions and among castes. Explanations are many but it has been observed that this coincides with the increase in the percentage of total farm holdings which operate less than 0.5 ha land, the decline in farm size overall, and the proportion of rural households which are landless, as suggested in the NLSS surveys 1993/94 and 2003/04.

At the same time, the role of landholding in poverty is erratically explored in Nepal, even though not to do so seems counterintuitive. At least one donor-funded review of poverty and disadvantage barely considered it relevant, seemingly in the belief that education, empowerment and other factors have a greater role for helping people clamber out of poverty.²⁷

As described in Chapter One provision of land is well understood to be insufficient on its own to overcome poverty. Nonetheless it clearly has a role, even in a rapidly urbanising environment and remains a main justification for redistributive reform up until the present. Exactly how much land is needed and under what terms it is accessed, clearly determines the level of effect.

A good example of this is China where majority access of land under collectivisation actually depressed incomes and helped create an artificial famine during the late 1950s, killing more than 30 million people and sending many more into destitution. This was reversed with a new tenure arrangement from 1979-84, enabling families to retain significant portion of income from their farms. This triggered the greatest leap out of poverty the world has yet

²⁶ The decline in equity is from a coefficient of 0.24 in 1984/85 to 0.34 in 1995/95 to 0.41 in 2003/04 (NLSS 2003/04).
²⁷ See DFID & World Bank funded study of unequal citizens in Nepal in 2006. The Agricultural Perspective Plan also gives land ownership token mention, although in its original iteration this was because it was formulated as a sister exercise to the Land Reform Commission of 1994/95.
seen: 167 million people rose above the poverty line during the 1980s under the land household responsibility system (Kellog and Prosterman 2006).

In India, where the farm size – poverty link has been thoroughly explored it has been concluded that land status is the most accurate predictor of poverty, over and above literacy, gender or caste (Deininger et al. 2007). To farming households the links between poverty and landholding is common sense.

In Nepal the correlation between landholding and poverty is clear. Only 23.8% of those with more than 2 ha of land are below the poverty line while 39.3% of those with less than 0.2 ha fall below the line (NLSS 2003/04). The change from having no land to having land is progressively positive for reducing the probability of being below the poverty line: by 6% from having no land to acquiring a small plot (under 1 ha), by 22% by acquiring a medium sized plot (1-2 ha) and by 46% by acquiring a plot larger than 2 ha. Although landless are not included in Table 6, it provides indicative data. Table 7 links poverty, landlessness and ethnicity/caste. Table 8 shows that poorest rural households (lowest quintile) and most of who may be presumed to be landless, depend heavily upon agricultural labour to survive.

### A SNAPSHOT OF POVERTY CORRELATES

71.5% of urban households are in the highest wealth quintile compared to 10.8% of rural households. 35% of rural households compared to 10% of urban households are in the lowest quintile.

Wealth varies also by region; most wealth is in the Central Region and least in Mid-Western and Far-Western Regions. These have the highest incidents of poverty, infant mortality, infrastructure, education and other indicators. Households in the mid and far-west are almost 4 times more likely to be the poorest, and almost 50% of the wealthiest families are in the central region.

Differences more predictably exist by class, caste and ethnicity. Agricultural wage labourers are the poorest socio-economic group (55% below the poverty line. Self-employed farmers have become less poor since 1995, due mainly to out-migration & remittances, not raised farm productivity. Hill ethnic groups (janajatis) and Muslims became poorer in the same period. Among castes and ethnicities, poverty is highest for Dalits (former untouchables) (46%), ethnic groups (Janajatis) living in the Hills (44%) (but with high variation among different groups) and the Muslim minority in the Tarai (41%). Only 28% of members of upper castes or Newars fall below the poverty line.

Crosscutting all the above, is family data; the larger the family the poorer it is.
### Linking Farm Size, Area and Poverty

<table>
<thead>
<tr>
<th>Farm Size</th>
<th>Household Types</th>
<th>Poor Household % (sub-poverty line)</th>
<th>Poor HH as % total rural population</th>
<th>1995 Per Capita Income Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Farmers</td>
<td>Mountains</td>
<td>29.03</td>
<td>4.76</td>
<td>7,652</td>
</tr>
<tr>
<td>0.5 ha -&lt; 3 ha</td>
<td>Eastern Hills</td>
<td>42.56</td>
<td>16.88</td>
<td>6,881</td>
</tr>
<tr>
<td></td>
<td>Western Hills</td>
<td>35.05</td>
<td>17.58</td>
<td>7,323</td>
</tr>
<tr>
<td></td>
<td>Tarai</td>
<td>25.10</td>
<td>14.47</td>
<td>8,832</td>
</tr>
<tr>
<td>Medium Farmers</td>
<td>Tarai</td>
<td>17.35</td>
<td>4.91</td>
<td>8,670</td>
</tr>
<tr>
<td>3 ha - &lt; 5 ha</td>
<td>Eastern Hills &amp; Mountains</td>
<td>35.98</td>
<td>6.19</td>
<td>7,737</td>
</tr>
<tr>
<td></td>
<td>Western Hills &amp; Mountains</td>
<td>18.31</td>
<td>2.26</td>
<td>9,365</td>
</tr>
<tr>
<td>Large Farmers</td>
<td>Large Farmers</td>
<td>18.93</td>
<td>4.71</td>
<td>11,211</td>
</tr>
<tr>
<td>5+ ha</td>
<td>Presumed landless</td>
<td>45.64</td>
<td>13.25</td>
<td>5,922</td>
</tr>
<tr>
<td></td>
<td>Agricultural Labourers</td>
<td>19.96</td>
<td>6.23</td>
<td>11,402</td>
</tr>
<tr>
<td></td>
<td>Non data</td>
<td>31.61</td>
<td>9.43</td>
<td>10,493</td>
</tr>
<tr>
<td></td>
<td>Non-Farm Tarai</td>
<td>18.93</td>
<td>4.71</td>
<td>11,211</td>
</tr>
<tr>
<td></td>
<td>Non-Farm Other Areas</td>
<td>31.61</td>
<td>9.43</td>
<td>10,493</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>29.70</td>
<td>100.0</td>
<td>8,596</td>
</tr>
</tbody>
</table>


### Overview of Poverty Incidence by Caste/Ethnicity 1995/96 and 2003/04

<table>
<thead>
<tr>
<th>Caste/Ethnicity (Janajati)</th>
<th>% Below Poverty Line 1995/96</th>
<th>% Below Poverty Line 2003/04</th>
<th>% Landless Households in this Caste/Ethnicity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chhetri/Thakuri/Brahman</td>
<td>34</td>
<td>19</td>
<td>6</td>
</tr>
<tr>
<td>Tarai Middle Castes</td>
<td>29</td>
<td>21</td>
<td>11</td>
</tr>
<tr>
<td>Newar</td>
<td>19</td>
<td>14</td>
<td>11</td>
</tr>
<tr>
<td>Hill Janajati</td>
<td>49</td>
<td>44</td>
<td>8</td>
</tr>
<tr>
<td>Tarai Janajati</td>
<td>53</td>
<td>36</td>
<td>20</td>
</tr>
<tr>
<td>Dalits</td>
<td>59</td>
<td>47</td>
<td>48</td>
</tr>
<tr>
<td>All Nepal</td>
<td>42</td>
<td>31</td>
<td>24.4</td>
</tr>
</tbody>
</table>


### Percent Income Share in Rural Households from Agriculture by Consumption Quintile Groups, 2003-04

<table>
<thead>
<tr>
<th>Quintile</th>
<th>Crop</th>
<th>Stock</th>
<th>Agric wage labour</th>
<th>Non-agric wage labour</th>
<th>Non farm employment</th>
<th>Remit-tances</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lowest</td>
<td>28.50</td>
<td>9.65</td>
<td>21.56</td>
<td>17.7</td>
<td>5.1</td>
<td>10.3</td>
<td>7.2</td>
</tr>
<tr>
<td>Q2</td>
<td>28.77</td>
<td>12.18</td>
<td>15.41</td>
<td>16.6</td>
<td>6.3</td>
<td>12.6</td>
<td>8.1</td>
</tr>
<tr>
<td>Q3</td>
<td>28.46</td>
<td>11.77</td>
<td>9.46</td>
<td>15.0</td>
<td>7.5</td>
<td>18.1</td>
<td>9.7</td>
</tr>
<tr>
<td>Q5</td>
<td>21.07</td>
<td>9.42</td>
<td>1.73</td>
<td>14.3</td>
<td>14.2</td>
<td>19.9</td>
<td>19.3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>25.54</td>
<td>10.75</td>
<td>7.51</td>
<td>14.6</td>
<td>10.3</td>
<td>17.2</td>
<td>14.1</td>
</tr>
</tbody>
</table>

12 Differences in landholding by agro-economic zone are clearer than by region

It is well known in Nepal that both larger farms and landlessness are more prevalent in the Tarai. Renting in land is also more common. Table 9 summarizes the data.

There are also differences by region but these are less clear. NSAC data for 2001/02 presented in Table 10, shows the highest proportion of small farms are in the far west of the country (80.2% under 1 ha) and the highest proportion of larger farms in the far east of the country. Table 11, based on data from local regional surveys, shows landlessness is most extreme in the east, while NPC data shows this as highest in the centre of the country (Table 10). Both the sampling and sampling frame of these surveys are different; it will be recalled from Box 4 that the NSAC is a small but purposively selected sample which is then up-scaled to regional level. The localized surveys were more comprehensive within selected villages, but the basis of how these were selected is not made clear.

<table>
<thead>
<tr>
<th>Farm Size</th>
<th>NEPAL</th>
<th>TARAI</th>
<th>HILLS</th>
<th>MOUNTAINS</th>
</tr>
</thead>
<tbody>
<tr>
<td>% landlessness (without arable)*</td>
<td>24.4</td>
<td>30.8</td>
<td>20.6</td>
<td>7.5</td>
</tr>
<tr>
<td>% below 0.2 ha</td>
<td>18.2</td>
<td>30.0</td>
<td>16.7</td>
<td>12.0</td>
</tr>
<tr>
<td>% holdings below 1 ha</td>
<td>74.7</td>
<td>67.8</td>
<td>80.8</td>
<td>76.8</td>
</tr>
<tr>
<td>% holdings above 3 ha</td>
<td>2.8</td>
<td>5.1</td>
<td>1.0</td>
<td>1.7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tenure</th>
<th>NEPAL</th>
<th>TARAI</th>
<th>HILLS</th>
<th>MOUNTAINS</th>
</tr>
</thead>
<tbody>
<tr>
<td>% holdings owned only</td>
<td>86.4</td>
<td>81.9</td>
<td>90.4</td>
<td>91.4</td>
</tr>
<tr>
<td>% holdings rented only</td>
<td>1.1</td>
<td>1.5</td>
<td>0.8</td>
<td>0.4</td>
</tr>
<tr>
<td>% holdings mixed owned &amp; rented</td>
<td>11.8</td>
<td>16.0</td>
<td>8.7</td>
<td>8.2</td>
</tr>
<tr>
<td>Area rented as % total land</td>
<td>8.7</td>
<td>12.8</td>
<td>4.1</td>
<td>4.0</td>
</tr>
</tbody>
</table>

Source of base data: National Sample Census of Agriculture 2001/02.
* Population Census 2001. Note that the data on holding size represents selected data points only, not meant to cumulatively add up to 100%.
13 Landholding correlates with caste and ethnicity in predictable ways

Landholding varies by ethnicity and caste and largely in ways expected. High castes own more land and rent in less, and especially those living in the Hills. Low castes own less land and rent in more. Tarai Dalits are worse off for land than hill Dalits (Tables 12). Table 13 confirms the trend and shows that 80% of Tarai Dalits and 75% of Hill Dalits are functionally landless.

Tarai Janajati (ethnic groups or nationalities) also have the least land of their own and accordingly more commonly rent in land. Among ethnic nationalities, Raji groups in the Hills and Tarai have the least land. Land holding among the Dhanuk is least equitable with high proportions of landlessness and large holdings.
Proportion of Rural Households Own Land, Own + Rent in Land and Rent in Land Only by Caste and Ethnicity

<table>
<thead>
<tr>
<th>Caste/Ethnic Groups</th>
<th>Own Land</th>
<th>Own + Rent-in</th>
<th>Rent Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Brahman &amp; Chhetri*</td>
<td>78.9</td>
<td>18.8</td>
<td>2.3</td>
</tr>
<tr>
<td>Hill B &amp; C+</td>
<td>81.0</td>
<td>17.6</td>
<td>1.4</td>
</tr>
<tr>
<td>Tarai B &amp; C+</td>
<td>72.7</td>
<td>22.2</td>
<td>5.1</td>
</tr>
<tr>
<td>Newar**</td>
<td>70.4</td>
<td>24.8</td>
<td>4.8</td>
</tr>
<tr>
<td>Tarai Middle Castes</td>
<td>60.4</td>
<td>27.8</td>
<td>11.9</td>
</tr>
<tr>
<td>Total Dalits</td>
<td>63.3</td>
<td>23.9</td>
<td>12.8</td>
</tr>
<tr>
<td>Hill Dalits</td>
<td>70.6</td>
<td>25.6</td>
<td>3.9</td>
</tr>
<tr>
<td>Tarai Dalits</td>
<td>51.4</td>
<td>21.1</td>
<td>27.5</td>
</tr>
<tr>
<td>Total Ethnicities</td>
<td>67.6</td>
<td>26.1</td>
<td>6.3</td>
</tr>
<tr>
<td>Hill Janajatis</td>
<td>73.9</td>
<td>22.2</td>
<td>3.9</td>
</tr>
<tr>
<td>Tarai Janajatis</td>
<td>47.9</td>
<td>38.4</td>
<td>13.7</td>
</tr>
<tr>
<td>Muslims</td>
<td>64.2</td>
<td>25.7</td>
<td>10.1</td>
</tr>
<tr>
<td>All Nepal</td>
<td>70.4</td>
<td>23.4</td>
<td>6.3</td>
</tr>
</tbody>
</table>


* Dominated by Brahman and Chhetri, with other smaller higher castes.
** Newar are mixed Mongoloid and Indo-Aryan: 84% are Hindu and they practice their own hierarchic caste system.
### Percent Landholding by Ethnicity and Lower Castes

<table>
<thead>
<tr>
<th>Ethnicity/Caste</th>
<th>Group</th>
<th>Location</th>
<th>Absolutely landless</th>
<th>House/ homestead only</th>
<th>(Sub-Total Landless)*</th>
<th>Near-Landless 0-&lt;1 acre (0.4 ha)</th>
<th>(Sub-Total Functional Landless)**</th>
<th>Small cultivators</th>
<th>Medium cultivators</th>
<th>Large cultivators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Santhal, Jhangad, Kisan, Munda</td>
<td>Ethnic</td>
<td>Tarai</td>
<td>98.46</td>
<td>4.91</td>
<td>(63.37)</td>
<td>10.44</td>
<td>(73.81)</td>
<td>7.07</td>
<td>18.26</td>
<td>0.87</td>
</tr>
<tr>
<td>Raute, Kusbodiyaa, Kusunda</td>
<td>Ethnic</td>
<td>Hills &amp; Tarai (Raute)</td>
<td>46.12</td>
<td>6.12</td>
<td>(52.24)</td>
<td>20.41</td>
<td>(72.65)</td>
<td>15.51</td>
<td>11.43</td>
<td>0.41</td>
</tr>
<tr>
<td>Rajbansi, Gangain, Chirai, Mache</td>
<td>Ethnic</td>
<td>Tarai</td>
<td>45.78</td>
<td>6.12</td>
<td>(51.90)</td>
<td>10.89</td>
<td>(62.79)</td>
<td>9.09</td>
<td>24.73</td>
<td>3.39</td>
</tr>
<tr>
<td>Sherpa, Bole, Walung</td>
<td>Ethnic</td>
<td>Mountains</td>
<td>32.40</td>
<td>3.81</td>
<td>(36.21)</td>
<td>20.45</td>
<td>(56.66)</td>
<td>18.27</td>
<td>20.02</td>
<td>2.04</td>
</tr>
<tr>
<td>Raj</td>
<td>Ethnic</td>
<td>Hills &amp; Tarai</td>
<td>31.64</td>
<td>15.07</td>
<td>(46.71)</td>
<td>28.91</td>
<td>(75.62)</td>
<td>14.22</td>
<td>9.81</td>
<td>0.33</td>
</tr>
<tr>
<td>Gurung</td>
<td>Ethnic</td>
<td>Hills</td>
<td>26.85</td>
<td>6.36</td>
<td>(33.21)</td>
<td>30.53</td>
<td>(63.74)</td>
<td>21.5</td>
<td>14.35</td>
<td>0.41</td>
</tr>
<tr>
<td>Tharu</td>
<td>Ethnic</td>
<td>Tarai</td>
<td>22.83</td>
<td>6.36</td>
<td>(28.19)</td>
<td>17.93</td>
<td>(47.12)</td>
<td>15.65</td>
<td>34.34</td>
<td>2.79</td>
</tr>
<tr>
<td>Danuwatar, Bhujel, Pahari, Baramu, Adhikari/Janajati</td>
<td>Ethnic</td>
<td>Hills &amp; Tarai (Bhujel)</td>
<td>20.04</td>
<td>10.59</td>
<td>(30.63)</td>
<td>32.84</td>
<td>(63.47)</td>
<td>20.28</td>
<td>15.73</td>
<td>0.51</td>
</tr>
<tr>
<td>Rai</td>
<td>Ethnic</td>
<td>Hills</td>
<td>20.04</td>
<td>4.89</td>
<td>(24.93)</td>
<td>24.97</td>
<td>(49.9)</td>
<td>24.24</td>
<td>25.04</td>
<td>0.76</td>
</tr>
<tr>
<td>Tamang</td>
<td>Ethnic</td>
<td>Hills</td>
<td>16.69</td>
<td>6.93</td>
<td>(23.62)</td>
<td>31.29</td>
<td>(54.91)</td>
<td>28.73</td>
<td>18.03</td>
<td>0.32</td>
</tr>
<tr>
<td>Limbu</td>
<td>Ethnic</td>
<td>Hills</td>
<td>15.83</td>
<td>4.57</td>
<td>(20.40)</td>
<td>27.06</td>
<td>(47.46)</td>
<td>25.00</td>
<td>26.82</td>
<td>0.91</td>
</tr>
<tr>
<td>Magar</td>
<td>Ethnic</td>
<td>Hills</td>
<td>14.41</td>
<td>5.88</td>
<td>(20.39)</td>
<td>33.33</td>
<td>(53.62)</td>
<td>28.53</td>
<td>19.21</td>
<td>0.63</td>
</tr>
<tr>
<td>Chanuk</td>
<td>Caste</td>
<td>Tarai</td>
<td>34.04</td>
<td>7.79</td>
<td>(41.83)</td>
<td>26.66</td>
<td>(67.49)</td>
<td>14.2</td>
<td>10.67</td>
<td>0.76</td>
</tr>
<tr>
<td>Tari Dalits</td>
<td>Caste</td>
<td>Tarai</td>
<td>43.98</td>
<td>9.89</td>
<td>(53.87)</td>
<td>26.19</td>
<td>(80.06)</td>
<td>11.3</td>
<td>8.3</td>
<td>0.34</td>
</tr>
<tr>
<td>Hill Dalits</td>
<td>Caste</td>
<td>Tarai</td>
<td>15.32</td>
<td>15.24</td>
<td>(30.56)</td>
<td>44.55</td>
<td>(75.11)</td>
<td>17.25</td>
<td>7.41</td>
<td>0.24</td>
</tr>
<tr>
<td>Religious Groups: Muslims, Churaute</td>
<td>Religious</td>
<td>Tarai</td>
<td>40.37</td>
<td>6.39</td>
<td>(47.76)</td>
<td>19.54</td>
<td>(60.94)</td>
<td>13.18</td>
<td>18.49</td>
<td>1.94</td>
</tr>
<tr>
<td>All Nepal</td>
<td></td>
<td></td>
<td>24.44</td>
<td>6.98</td>
<td>(31.38)</td>
<td>27.59</td>
<td>(59.01)</td>
<td>20.15</td>
<td>19.67</td>
<td>1.17</td>
</tr>
</tbody>
</table>

Source of data: UNDP/HDR, 2004, using acres not ha; landless: no land, semi-landless:< 0.2 acres (0.08 ha); marginal: 0.21-1 acre (0.4 ha); small: 1.0-2 acres (0.8 ha); Medium: 2-10 acres (4 ha); Large 10.1+ acres (4+ ha).

* Arable landless includes households with no land or less than 0.2 acres of land (0.08 ha).

** Functional landless includes landless, semi-landless and marginal cultivators with less than 0.4 ha.
14 Some women do own land

The Population Census (NPC 2001) found that women have land in their own names in only 14% of households. The Nepal Living Standard Survey (N = 3,912 households only) found that 8.1% of holdings were registered in the names of women and that their plots were smaller than for men; they held 5.3% of land.

Fewer women own land the further west one travels. Women own land in 21 percent households in Eastern Region. In Mid-Western Region the INSEC sample shows women owning land in 24% of households but again with less land than men (12% of area) (INSEC 2007). In the Far-west region, women have land of their own in only four percent of households.

By agro-ecological region, female ownership is higher in the Tarai in Mid-West Region where 25.5% of households have a family member with land of her own. This even rose to 42.6% in Pyuthan District, for unexplained reasons.

Urban women are more likely to own their own land or houses than rural women. In Kathmandu and Kaski, women own land in over 30 percent of households. In the rural districts of Darchula, Bajhang, Humla and Bajura women have land in less than two percent of households. Urban women of Brahman and Chhetri castes have more property in urban areas (29%) than their counterparts in rural areas.

The data on women’s land ownership by ethnicity and caste is inconsistent. Most surveys show women in Dalit, ethnic groups and Newar communities as more commonly land owners than in other caste and ethnic groups. However the INSEC survey in Mid Western Region found the opposite; Brahman/Chhetri women were significant owners (67.8%) while only 20% of women from indigenous groups own land. Newar and Muslims recorded lowest levels of female land ownership (1% of households) followed by women in former Kamaiya communities (4.4%) (INSEC 2007).

Stated reasons for women owning less land than men are predictable. Focus group discussions held by INSEC in 2006 listed these in order of importance: men run society, women risk divorce should they ask for land in their own name, there is not enough land, and the need for women to own land is not felt (INSEC 2007). Sharma and Thakurathi (2004) reported these reasons given by women: the law discourages us from owning land; dealing with government offices and courts to secure land is too cumbersome and time-consuming; and families fear that should a woman remarry the family will be deprived of the property in her name.
Both sets of discussions agreed that land entitlement increases the sense of security and equality for women: it helps women withstand and even oppose discrimination in the family, helps them to access credit and helps curb land sales by men without their consent.

**15 New government strategy to increase female land ownership seems to be working**

Many of the female holdings referred to above are not formally registered. They represent distinct parcels within a holding registered as belonging to a male head of household.

Analysis of land transfer patterns in the registers shows no increase in the proportion of properties registered by women between 1997 and 2002. This changed dramatically with the announcement in 2006/07 that women, disabled persons or members of disadvantaged groups including nationalities would not have to pay the full transactions (2% of land value in rural areas, 4% of urban properties). Table 14 illustrates the case for three districts.

Citing the Ministry of Land Reform and Management, the Kantipur Daily reported on 27 August, 2008 that land registration in women’s names had nearly doubled in 50 districts between 2006/07 and 2007/08 fiscal years. Data from 11 districts showed that 33.5% of holdings were in the name of women in 2008. Four of these have a high proportion of urban households and have the highest proportion of female owners. Extraordinarily the majority of holdings in Bhatkapur are held by women (59.91%) for reasons that have not been investigated here. A rise in female registration was also encountered in Morang District in the Tarai by this scoping study: 24% of transactions since the waiver have been in the name of women, leading the Revenue Officer to complain of the subsequent loss of revenue due to the rebate of Rs. 4-5 million.

Noticeably, the rise in female registration is not apparent among Dalits who also benefit from the waiver. Only 2.2% of transactions were to Dalits in these same 11 districts and few of these to Dalit women. No Dalit transfers were recorded in Morang District. The failure to have effect could be due to the need

<table>
<thead>
<tr>
<th>Year</th>
<th>Ilam</th>
<th>Kathmandu</th>
<th>Kailali</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997-2002</td>
<td>17</td>
<td>25</td>
<td>14</td>
</tr>
<tr>
<td>2008</td>
<td>26.6</td>
<td>28.57</td>
<td>24.5</td>
</tr>
</tbody>
</table>
for a certificate evidencing that the holder is a Dalit, obviously not required of women seeking to register. For Dalits most of the financial gain by registration is eradicated by the cost of acquiring this certificate. Nor was there a rise in registration among handicapped or members of martyred persons families; members of these groups registered only 17 new parcels overall among the 11 districts cited above.

While the rise in registration of houses or land by women is welcome, the tiny size of most properties registered needs observing. Additionally, it may be the case that positive response to the waiver has less to do with gender equity than families taking advantage of a new route to conceal holding sizes.

II. LAND RELATIONS

Feudal land relations continue to exist

Tenancy arises where farmers have no land or not enough land, or land but not enough other factors (tools, plough, oxen, seeds or fertilizer).

Land law from the mid 1990s sought to abolish tenancy altogether in order to create a farming nation of owner-operators (Chapter Three). A new nationwide programme to register tenants was launched. According to official Ministry of Land Reform figures, by its closure 541,802 tenants had been registered (2003) with the intention that these persons receive half of the land on which they were tenants (only partially implemented; see later). Table 15 shows that by far the majority of registered tenants are in Central and Eastern Regions and that registered tenants represent 15.8% of all farming households.

<table>
<thead>
<tr>
<th>Development Region</th>
<th>Number of Registered Tenants</th>
<th>% of all Tenants</th>
<th>Number of Registered Owners/ Holdings</th>
<th>% of all Owners/Holdings</th>
<th>Tenants as % owners &amp; tenants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern</td>
<td>145,295</td>
<td>26.8</td>
<td>699,016</td>
<td>24.2</td>
<td>17.2</td>
</tr>
<tr>
<td>Central</td>
<td>296,402</td>
<td>54.7</td>
<td>967,083</td>
<td>33.5</td>
<td>23.5</td>
</tr>
<tr>
<td>Western</td>
<td>71,396</td>
<td>13.2</td>
<td>681,784</td>
<td>23.6</td>
<td>10.5</td>
</tr>
<tr>
<td>Mid Western</td>
<td>20,123</td>
<td>3.7</td>
<td>344,761</td>
<td>11.9</td>
<td>5.5</td>
</tr>
<tr>
<td>Far Western</td>
<td>8,586</td>
<td>1.6</td>
<td>190,813</td>
<td>6.7</td>
<td>4.2</td>
</tr>
<tr>
<td>All Nepal</td>
<td>541,802</td>
<td>100.0</td>
<td>2,886,457</td>
<td>100.0</td>
<td>15.8</td>
</tr>
</tbody>
</table>

Table 16 shows that the largest size holdings (by region) have the fewest number of registered tenants and that these are in the western third of the country. This is consistent with NSAC 2001/02 data which shows that highest levels of renting in land and owning plus renting in land are in Eastern and Central Regions (refer back to Table 10). However it also suggests that the number of registered tenants is not a true indication of levels of tenancy overall and that the highest number of unregistered tenants may be in western regions. The Mid Western sample within Table 17 reinforces this; it shows that nearly a third of households rent in land in that region (and much higher in the Tarai part of the region). National figures also suggest a higher proportion of tenants than registered tenancy implies (Table 17).

<table>
<thead>
<tr>
<th>Development Region</th>
<th>Total Area of Holdings (Ha)</th>
<th>Total Number Owners</th>
<th>Average Holding Size (Ha)</th>
<th>Registered Tenants per Holding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern</td>
<td>1,643,333</td>
<td>699,016</td>
<td>2.3</td>
<td>0.2</td>
</tr>
<tr>
<td>Central</td>
<td>1,283,297</td>
<td>967,083</td>
<td>1.3</td>
<td>0.3</td>
</tr>
<tr>
<td>Western</td>
<td>1,266,772</td>
<td>681,784</td>
<td>1.8</td>
<td>0.1</td>
</tr>
<tr>
<td>Mid Western</td>
<td>1,110,702</td>
<td>344,761</td>
<td>3.2</td>
<td>0.1</td>
</tr>
<tr>
<td>Far Western</td>
<td>771,690</td>
<td>193,813</td>
<td>3.98</td>
<td>0.04</td>
</tr>
<tr>
<td>All Nepal</td>
<td>6,075,794</td>
<td>2,886,457</td>
<td>2.1</td>
<td>0.2</td>
</tr>
</tbody>
</table>


* It cannot be assumed that all paddy and upland is privatized; much of it may be held in public lands.

---

**Table 17**

<table>
<thead>
<tr>
<th>Tenure Arrangements in Different Surveys</th>
<th>(a) % Own Only</th>
<th>(b) % Rent Only</th>
<th>(c) % Mixed Own &amp; Rent</th>
<th>(b) + (c)</th>
<th>Area of land rented (ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mid-Western Sample 2006: 24 VDC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Tarai holdings only</td>
<td>58.7</td>
<td>17.0</td>
<td>24.3</td>
<td>45.5</td>
<td></td>
</tr>
<tr>
<td>- Hill holdings only</td>
<td>91.9</td>
<td>2.4</td>
<td>6.0</td>
<td>4.8</td>
<td></td>
</tr>
<tr>
<td>All Mid-Western*</td>
<td>68.6</td>
<td>12.6</td>
<td>18.8</td>
<td>31.4</td>
<td>33.0</td>
</tr>
<tr>
<td>All Nepal Sample 2002: 80 VDC</td>
<td>63.2*</td>
<td>25.3</td>
<td>No data</td>
<td>No data</td>
<td></td>
</tr>
<tr>
<td>NSAC 2001 (excl. landless) Sample = 3.7% Holdings</td>
<td>86.4</td>
<td>1.1</td>
<td>11.9</td>
<td>13.0</td>
<td>8.7</td>
</tr>
<tr>
<td>Population Census 2001 (NPC) 100% households urban &amp; rural</td>
<td>70.4</td>
<td>6.3</td>
<td>23.4</td>
<td>29.7</td>
<td>No data</td>
</tr>
</tbody>
</table>


* Those with no land of their own: 36.8% including workers.
2 Concealment of tenancy is high

It has been difficult for some time to determine real levels of tenancy in Nepal. Table 18 shows that the number of registered tenants is uneven over the last half-century, with no clear trend in increase or decrease.

Should the 2001 NPC data be taken as a guide, then 29.7% of households or 1.8 million households are renting in land or housing today, over three times the current registered tenant level. This includes urban rental. Roughly consistently, if the INSEC survey of Mid Western Nepal finding 31% of rural households to be tenants is applied to rural areas nationally, then 1.45 million rural households are renting in land.

A CSRC survey also found 37% of households to be tenants in 1997 (Uprety 2005). CSRC’s later review of tenancy in 2006 in 22 VDCs found only 16.7% of households to be tenants but noted that this excluded those who were agricultural labourers operating under annual or seasonal contracts. The civil society land reform movement identifies tenant households as at least 690,000 (CSRC 2007a), again excluding those who have been forced to become annual labourers.

Overall, it may be safely concluded that registered tenants represent a low proportion of tenants on the ground and that the real number of tenants is in the region of at least 1.5 million households, or 30% of rural households. Nonetheless, this does suggest a sharp decline in tenancy from the 80% of households which Regmi (1977) estimated to be tenants in the 1950s to be tenants in the 1950s. Assuming Regmi’s estimate was correct, it is unknown how far this real decline is the result of (i) reclassification of tenants as farm labourers, (ii) the result of out-migration and departure from the farm altogether, or (iii) the result of these tenants securing land of their own.

As elaborated in the next chapter, many tenants never managed to get their tenancy recognised. Registration began in 1964 with requirements that tenancy relations be formalised in contracts and became even less appealing to landlords in 1996/97 with the decision that all tenanted land should be partitioned, the tenant to receive one half. In the absence of accurate recording of tenants by Government before this event, compounded by absence of enforcement, thousands of landlords have simply denied that they have tenants on their land, physically evicted them or transformed their conditions into those of farm labourers, ‘hired’ on a seasonal basis, and which many tenants accept in fear of being evicted. Mobility in the tenant/labour sector is demonstrated in all
surveys as now extremely high, most sharecropping another’s land for one to two years.

Being a tenant does not necessarily mean a household is entirely landless. Many tenants own homesteads and/or marginal plots. Areas of tenanted land identified in local surveys reinforce this level of real tenancy; INSEC found that 37.2% of the total farmed area surveyed in Mid Western Region was handed over to tenants/renters to farm. This is nearly five times the rate of 8.7% officially tenanted farming area in Nepal as a whole (Table 18). Once again, poor data and discrepancies make it difficult to be sure of facts.

Perhaps the best indication of concealed tenancy is the ridiculously large areas theoretically available to the half million registered tenants to farm, as shown in Table 19. Even considering only the land area that is actually cultivated,
this ranges from 2.9 ha per tenant in Central Region to 34.35 ha in Far Western Region. This suggests there are many more tenants than recognized, now defined as workers and that most live in the west.

3 Exploitation of tenants and workers is arguably worse than before the reforms

The denial of legal tenancy adds insult to injury for tenants, whose labour is already exploited in traditional arrangements.

Many of the estimated one million or more land renters who are not formally registered have not only lost their right to receive a share of the land they may have worked for years if not generations, but have also lost physical security of occupancy (homes) and job security; they are liable to be evicted every one or two years to allow the landlord to avoid having tenancy claims lodged. Gains have been few; surveys report no discernible real increase in the amount of the crop the worker may now claim as a result of being a worker rather than a tenant.

The forms of tenancy existing in 2001 as acknowledged by the Ministry of Land Reform and Management are itemized in Table 20. Adhiya or sharecropping is most common in which the tenant provides all the labour and the landlord varying portions of inputs (seeds, fertilizer, tools, oxen & plough). The main crop is to be equally shared. In practice the 50% share under Adhiya is believed to be rarely applied; this may be because the owner provided all inputs or more commonly, because the tenant is in debt to the landlord.

Thekka is the next most common recognized tenancy regime, involving a fixed quantity of produce that is payable by the tiller to the land owner. Other forms tend to require the tenant to provide entirely unpaid labour to the landlord.

<table>
<thead>
<tr>
<th>Type of Tenancy</th>
<th>Main Feature</th>
<th>% Holdings under this Regime Nationally (2001)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adhiya</td>
<td>Share of produce in equal portions</td>
<td>6.0</td>
</tr>
<tr>
<td>Thekka</td>
<td>Fixed share</td>
<td>1.3</td>
</tr>
<tr>
<td>Mortgaged</td>
<td>Tenant farms under debt paying interest in labour</td>
<td>0.7</td>
</tr>
<tr>
<td>Fixed amount of money</td>
<td>Contracted; more typical of modern renting</td>
<td>0.5</td>
</tr>
<tr>
<td>Exchange for services</td>
<td>Most vulnerable to exploitation</td>
<td>0.1</td>
</tr>
<tr>
<td>Other</td>
<td>Unspecified</td>
<td>0.1</td>
</tr>
<tr>
<td>Total</td>
<td>All tenanted/rented land</td>
<td>8.7</td>
</tr>
</tbody>
</table>

Source of base data: National Sample Census of Agriculture, 2001/02
either because of debt or in fear that failure to provide extra labour will result in eviction. Unacknowledged systems include Trikhandi, in which the landowner takes two thirds of the crop and Bataiya, an equally exploitative form of sharecropping practiced in the Tarai. In worst cases a one-tenth share is given the tenant (Dasaundh).

4 Failed tenancy reform must contribute significantly to stagnation in agriculture

Disturbed tenancy relations impact both owner and tenant. As Ministry of Land Reform and Management figures show many tenants abscond from the farm at this time.

Reviewing tenancy in 22 VDCs, CSRC reported these trends (CSRC 2003) -

a. Numbers of peasants cultivating land on adhiya trikhandi and bataiya arrangements has continued to increase

b. The natural class alliance between landlords and officials has prevented many tenants from being registered

c. Often a landlord has both registered and unregistered cultivators working for him

d. Landowners evict cultivators on the pretext that they have been unable to pay their rent in cash or kind (the crop share or kut) even when there is a drought or other fair explanation

e. Receipts are rarely issued by landlords on payment of rent

f. Rents/crop shares are collected often by middlemen as landlords usually reside in towns or cities, making it doubly difficult to secure receipts

g. Requests for receipts meet with threats of eviction

h. Tenants are forced to vote for candidates in accordance with the instructions of landlords or face eviction

i. Elected representatives generally side with landlords in any dispute

j. Landowners create divisions among tenants to prevent solidarity and organization

k. Tenants are often required to provide additional labour to secure a place to farm

l. Unregistered lands in the village are controlled by landlords

m. Illiteracy and lack of knowledge of the law helps prevent cultivators from claiming their rights
n. Requests for help from land offices by tenants are often met with requests for bribes

o. There was not a single recorded instance of tenants on Guthi land (religious property) receiving a receipt and Guthi tenants also believe the rent (crop share) never reaches the corporation or land offices, appropriated by priests

p. Kat payable on Guthi lands are generally higher than for private landlords

q. Today the least fertile land is given to tenants to farm

r. Tenants regulate their investment of labour in tenanted land, needing the food share yet reluctant to invest too much effort given the low returns and insecurity.

There is little in the above suggesting a sound basis for either landlords or tenants to invest in the lands they own or till. This can hardly be helpful to agricultural productivity, quite aside from the discontent and unrest poor conditions engender.

5 Serfdom continues

Underlying tenancy is more institutionalized capture of labour in Nepal acknowledged as bonded labour. This existed in varying degrees and forms in much of feudal Nepal and has continued into the 21st century in especially the western half of the country.

This is despite the abolition of slavery in 1924 and a series of constitutional and other laws outlawing these forms of exploitation including a Supreme Court Ruling in 2006 outlawing the keeping of Haliyas.

The case of Kamaiya has been a good deal more prominent in Nepal than that of Haliyas or Haruwas. Kamaiya live in the five western Tarai Districts of Dang, Banke, Bardiya, Kailali and Kanchanpur (the area originally known as ‘new land’ or Naya Muluk). Their condition has been of bondage in that whole households worked for food for a landlord in indebted conditions from which they could not easily escape. The origin of this bondage was characteristically creeping dispossession stemming in turn from the colonization of the Tarai by hill people over the last century and a half. Most Kamaiya are of local Tharu ethnic origin, and who found their lands allocated by rulers to royalty and other elites and civil servants. Thence various mechanisms were used to attract
settlement and labour into these areas as described in Chapter Three, especially from the 1960s.

The mechanism of dispossession and bondage has been classical; poorer Tharu were provided loans at high interest, establishing their dependence.

With the re-advent of democracy in Nepal in 1990 and through the attention of NGOs, the Kamaiya issue entered the political agenda in 1991 and has since become a reform issue (Chapter Three). Here it may be noted that there are some 30,000 self-identified Kamaiya in the five districts in 2008, some 12,000-14,000 of whom have been assisted with land and rehabilitation.

Other communities with a history of more partial bondage have made their voice heard and most specifically the Haliyas in the hills of Central and Eastern but especially Western Nepal. Hali means tiller and Haliyas (known as Huruwars in the Tarai) are ploughmen who cultivate for landlords over some years or even generations virtually for no return, their labour treated as interest on the loans they or forefathers took from landlords. Their wages are kept to so pitiful levels that Haliyas are unable to even pay off the interest to the loan and sink inexorably deeper into debt, carried over generation to generation.

Their bondage is considered less complete than that of Kamaiya only in the sense that some own a small shelter or parcel of land themselves, sometimes given to them after years of service. Unlike Kamaiyas, landlords have never been bound to provide food for these ploughmen who are summoned to the landlord’s farm only at plough time. Most Haliyas are Dalits, and this untouchability intensifies their oppression. As example, Tharu Kamaiya are permitted to enter houses of landlords and receive food, not the case with Dalit Haliyas. Instead their wives are forced to work on the fields and their children forced to herd animals. Numbers are not known but are probably no fewer than 50,000 households.

6 Indebtedness is rife

Landlessness and indebtedness are well established as prime factors sustaining serfdom/feudal land relations and their removal therefore key themes in reformism.

Share tenancy helps sustain indebtedness, cultivators rarely receiving a fair return for their labour but without sufficient land or resources of their own to demand an increase. Alternatives to money-lending landlords are still limited in Nepal, money-lenders in towns often being of the same landlord class and charging even more interest. Formal sector loans continue to depend
almost entirely on real estate as collateral (land, houses, apartments & business premises with 86% of bank loans so rooted). This excludes the landless and those with marginal holdings, together around 60% of the rural population. The Human Development Report says that non-property based micro-credit reaches only 200,000 households and by no means all of whom are poor (UNDP 2004).

Tenancy reform is said to have increased indebtedness in that evicted tenants have been forced to turn to even more exploitative money-lenders than their former landlords. Quite aside from Kamaiya and Haliyas/Huruwas as above, whole ethnic communities may be in debt, reportedly the case for the majority of Chepangs who have lost their limited land assets to Brahman, Chhetri and Tamang landlords and trade their labour for food on-farm and off-farm in Brahman-owned shops (Aryal & Kerkhoff 2008).

7 Absentee landownership continues at high levels

At the other extreme, there has been no decline in the habit of landlords not to farm themselves. Absentee landlordism has a long history in Nepal. After all, part of the definition of a high caste Brahman is that he is not to till land and thence must use others for this task and need not even reside in the area. In this way the origins of private property in Nepal rested not on farming the land but being permitted to extract its revenue from those who did.

Anecdotally, this scoping study met almost no Nepalese official in government, non-government or international agency who does not own a rural farm and yet lives full-time in the town or city. Often these owners, and particularly those with lands in the troubled Tarai, have not visited their lands for a decade or more, but continue to collect rent in the form of crop share via intermediaries. For reasons which range from the felt need to supplement low salaries with food from the farm and socio-cultural and sentimental reasons, there is limited will to surrender ownership of these farms to tillers. Some officials indicated that they plan to retire to the land in due course, although the likelihood of this occurring in practice is doubtful.

Absenteeism has spread to the peasant farmer sector in response to declining size and fertility of farms, education, urbanization and economic growth with alternative opportunities. Out-migration for work in the Tarai or beyond is now a well-established trend. Already in 1981 one third of rural households had an absentee member (Shrestha 2001 after CBS 1984). Recorded out-migration from the country altogether involves 0.76 million workers today, 70% of whom come from the hills and mountains. Most are male, young and provide unskilled labour (Adhikari 2008).
8 The proportion of idle land may be considerable

There are these reasons for leaving cultivable land untilled at this time:

a. the land is in genuine need of fallow to recover fertility;
b. the returns on these parcels are too low to invest labour;
c. critical family labour is absent, on a temporary out-migration basis;
d. conflict has forced the family to abandon the area;
e. de facto abandonment of lands through more or less permanent migration out of hilly areas into the Tarai, but with ownership still registered; and
f. absentee or non-farming land owners are unwilling to place their land under tenants/workers for fear that they will claim partition rights under the 1997-2001 amendments to the land law providing for this.

Anecdotally, the last is considered the most active factor and affecting mainly medium to large holdings in the Tarai, while the penultimate factor (de facto abandonment) drives idle lands in the Hills and Mountains.

However the INSEC survey in Mid-Western Nepal found that in practice among 24 VDCs that the main causes for leaving land fallow in 2006 were in this order of frequency: lack of irrigation, insecurity, low yield, absentee members needed to farm and lack of inputs (INSEC 2007). Some 13% of farms in the sample were largely or all uncultivated and this was greatest in the Hills. The main class of holding affected was marginal to small farms (less than 3 ha). Two thirds of interviewed households said they would cultivate ‘if the security situation improved’ and 48% said they would do so if or when their missing cultivator family member returned. With formal peace since 2006 some may have since returned.

At the same time it is noticeable that proportionately most of the fallow land was in farms owned by larger owners; 57% of the fallow was owned by Brahman/Chhetri; 26% by Janajati and 16% by Dalits. Newar and Muslims had none of their holdings in fallow. Moreover the reasons given above by farmers were by those who were present on the farm – and many large landlords and their families were absent.

9 The real extent of private rural property and therefore unfarmed private land is unclear

According to records from the Ministry of Land Reform and Management, 6 million ha of Nepal is private land (Table 21). This constitutes 41% of the country
land area. Just over half of this private land is arable land (56%). 58% of this is in turn upland and 42% is paddy. The arable land is confusingly termed ‘actual cultivated land’ (arable land or farmland might be preferable). Confusion arises in that CBS/NSAC using this arable land element as its description of holdings in its agricultural sample surveys every decade (Table 22). Of this cultivable land, it records that only around 6% of this was left unfarmed in 2001 (Table 23).

Large areas of private rural holdings taken in their totality are uncultivated (Table 21). Some of the land is probably too rocky, infertile, steep or in other ways unusable for farming. This is reinforced by the fact that in 2007/08 only

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**Table 21**

<table>
<thead>
<tr>
<th>Total Registered Holding Area Ha</th>
<th>Cultivated Area Ha</th>
<th>% cultivated</th>
<th>% uncultivated</th>
</tr>
</thead>
<tbody>
<tr>
<td>By Region</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern</td>
<td>1,643,333</td>
<td>1,021,743</td>
<td>62.0</td>
</tr>
<tr>
<td>Central</td>
<td>1,283,297</td>
<td>860,228</td>
<td>67.0</td>
</tr>
<tr>
<td>Western</td>
<td>1,266,772</td>
<td>740,810</td>
<td>58.48</td>
</tr>
<tr>
<td>Mid Western</td>
<td>1,110,702</td>
<td>480,648</td>
<td>44.17</td>
</tr>
<tr>
<td>Far Western</td>
<td>771,690</td>
<td>294,944</td>
<td>38.22</td>
</tr>
<tr>
<td>Total</td>
<td>6,075,794</td>
<td>3,408,373</td>
<td>56.09</td>
</tr>
</tbody>
</table>

| By Agro-Ecological Zone          |                   |              |               |
| Mountains                        | 1,095,753         | 437,800      | 39.95         | 60.05         |
| Hills                            | 3,398,726         | 1,665,934    | 49.0          | 51.0          |
| Tarai                            | 1,581,315         | 1,304,639    | 82.5          | 17.5          |
| Total                            | 6,075,794         | 3,408,373    | 56.09         | 43.91         |

Sources of Base Data: Department of Survey and Department of Land Reform, MLRM, September 2008.

---

**Table 22**

<table>
<thead>
<tr>
<th>Date</th>
<th>No. Registered Owners/Holdings '000s</th>
<th>Area of Registered Private Property Ha</th>
<th>Farmland/Cultivable Holding Area '000 Ha</th>
<th>Cultivable Land as % of Country Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961/62</td>
<td>1,540.0</td>
<td>No data</td>
<td>1,685.4</td>
<td>11.45</td>
</tr>
<tr>
<td>1971/72</td>
<td>1,721.2</td>
<td>No data</td>
<td>1,654.0</td>
<td>11.24</td>
</tr>
<tr>
<td>1981/82</td>
<td>2,194.0</td>
<td>No data</td>
<td>2,463.7</td>
<td>16.74</td>
</tr>
<tr>
<td>1991/92</td>
<td>2,736.1</td>
<td>No data</td>
<td>2,597.4</td>
<td>17.65</td>
</tr>
<tr>
<td>2001/02</td>
<td>3,364.1</td>
<td>No data</td>
<td>2,653.9</td>
<td>18.00</td>
</tr>
<tr>
<td>2008</td>
<td>2,886.4</td>
<td>6,075,794</td>
<td>3,408.37</td>
<td>23.15</td>
</tr>
</tbody>
</table>

17.5% of private holdings in the Tarai were left uncultivated but 51% and 60% of holding areas in the Hills and Mountains were uncultivated. Nonetheless, anecdotal evidence suggests that a substantial area of useable farmland lies idle amongst the 2.6 million hectares of private lands which are not cultivated.

**10 Private ownership and area of private land are increasing**

Numbers of owners have doubled over the last 50 years as shown in Table 22. The area of farmland has also risen; actual cultivated land in 2001 constituted just over one tenth of the total country area and today constitute nearly a quarter. The area actually tilled declined over the same period (Table 23).

Number of parcels per holding have halved over the last 50 years. Still, most farms today comprise distinct parcels and not always proximate (Table 25). The number of parcels rises by holding size except those which are larger than 10 ha. The average number of parcels for farms of less than 0.1 ha is 1.3 parcels, rising to 7.5 parcels for holdings in the 5-10 ha range. Over 26% holdings in the Tarai comprised one parcel only in 2001. The national average for one parcel farms is 21.3% (NSAC, 2001/02).  

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**Table 23**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total farming area ('000 ha)</td>
<td>1685.4</td>
<td>1654.0</td>
<td>2463.7</td>
<td>2597.4</td>
<td>2653.9</td>
</tr>
<tr>
<td>Agricultural land ('000 ha)</td>
<td>1626.4</td>
<td>1592.3</td>
<td>2359.2</td>
<td>2392.9</td>
<td>2497.7</td>
</tr>
<tr>
<td>1. Arable land</td>
<td>1591.9</td>
<td>1567.0</td>
<td>2287.5</td>
<td>2323.4</td>
<td>2357.0</td>
</tr>
<tr>
<td>Land under temporary crops</td>
<td>1550.5</td>
<td>1537.1</td>
<td>2250.2</td>
<td>2284.6</td>
<td>2326.1</td>
</tr>
<tr>
<td>Other arable land</td>
<td>41.4</td>
<td>29.9</td>
<td>37.3</td>
<td>38.8</td>
<td>30.9</td>
</tr>
<tr>
<td>2. Land under permanent crops</td>
<td>12.2</td>
<td>15.0</td>
<td>29.2</td>
<td>29.4</td>
<td>117.5</td>
</tr>
<tr>
<td>3. Permanent pasture</td>
<td>22.3</td>
<td>10.3</td>
<td>42.5</td>
<td>36.9</td>
<td>19.7</td>
</tr>
<tr>
<td>4. Ponds</td>
<td>No data</td>
<td></td>
<td></td>
<td>3.3</td>
<td>3.5</td>
</tr>
<tr>
<td>% of Farm cultivated</td>
<td>96.38</td>
<td>96.26</td>
<td>95.7</td>
<td>92.12</td>
<td>94.11</td>
</tr>
<tr>
<td>Non-agricultural land ('000 ha)</td>
<td>59.0</td>
<td>61.7</td>
<td>104.5</td>
<td>204.5</td>
<td>156.3</td>
</tr>
<tr>
<td>1. Woodland and forest</td>
<td>13.8</td>
<td>4.7</td>
<td>15.0</td>
<td>108.8</td>
<td>37.2</td>
</tr>
<tr>
<td>2. Other land</td>
<td>45.2</td>
<td>57.1</td>
<td>89.5</td>
<td>95.7</td>
<td>119.1</td>
</tr>
<tr>
<td>Total land area of Nepal ('000 ha)</td>
<td>14,718.1</td>
<td>14,718.1</td>
<td>14,718.1</td>
<td>14,718.1</td>
<td>14,718.1</td>
</tr>
<tr>
<td>% area agricultural land</td>
<td>11.0</td>
<td>10.8</td>
<td>16.0</td>
<td>16.2</td>
<td>16.9</td>
</tr>
</tbody>
</table>

Chapter two: Rural landholding in Nepal

III. LAND TENURE AND ITS ADMINISTRATION

1. The forms of land ownership in Nepal are modern but limited

Following reforms since the 1950s, land holding is classified in Nepal as public, private or religious property. Public land is un-owned/un-ownable or de facto Government land. In practice a distinction is drawn between national land and community land. Public land within Village Development Committee Areas is now held to be under the responsibility of the community.

Public land as a whole encompasses significant natural resources including water and forests and may amount to three quarters of the country land area. This conflicts with Ministry of Land Reform information that total private holdings encompass 41% of the country area. Religious land (Guthi) (like non-taxable Islamic waqf in Muslim societies and ‘church land’ in Christian societies) is

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### Table 24
**Land Use in Nepal, 1991**

<table>
<thead>
<tr>
<th>Land Class</th>
<th>Ha 1991</th>
<th>% of Country Area</th>
<th>% 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forest Area</td>
<td>4,269,000</td>
<td>29</td>
<td>42.7</td>
</tr>
<tr>
<td>Woodland</td>
<td>1,559,000</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>Grasslands</td>
<td>1,745,000</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Uncultivable Land</td>
<td>998,000</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Cultivable Land</td>
<td>3,179,000</td>
<td>20</td>
<td>27</td>
</tr>
<tr>
<td>Water Bodies</td>
<td>2,968,100</td>
<td>21</td>
<td>19.3</td>
</tr>
<tr>
<td>Total</td>
<td>14,718,100</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>


### Table 25
**Fragmentation**

<table>
<thead>
<tr>
<th>Date</th>
<th>No. Owners &amp;/or Arable Holdings ‘000’s</th>
<th>Parcels ‘000’s</th>
<th>Average No. Parcels per Arable Holding</th>
<th>Average Holding Size Ha</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961/62</td>
<td>1,540.0</td>
<td>10,318.2</td>
<td>6.8</td>
<td>1.09</td>
</tr>
<tr>
<td>1971/72</td>
<td>1,721.2</td>
<td>12,282.5</td>
<td>7.2</td>
<td>0.96</td>
</tr>
<tr>
<td>1981/82</td>
<td>2,194.0</td>
<td>9,516.4</td>
<td>4.4</td>
<td>1.12</td>
</tr>
<tr>
<td>1991/92</td>
<td>2,736.1</td>
<td>10,806.2</td>
<td>4.0</td>
<td>0.96</td>
</tr>
<tr>
<td>2001/02</td>
<td>3,364.1</td>
<td>10,974.5</td>
<td>3.3</td>
<td>0.78</td>
</tr>
<tr>
<td>2008</td>
<td>2,886.4</td>
<td>18,646.0</td>
<td>6.4</td>
<td>1.18</td>
</tr>
</tbody>
</table>

also present, accounting for only a small percentage of the total land area and included in the above tables under ‘private landholding’.

Private rights in land are unfettered other than in size (ceilings), without term and fully inheritable and transferable, including in the open market. No law exists to limit fragmentation below a certain size (floors). No law exists requiring a holder by law to cultivate his land (development conditions).

Although some report the opposite (e.g. UNDP 2004) this study found the market in land to be brisk. For example, Dang District in the Tarai reported 12,727 land transactions in 2007/08 or 13% of holdings or parcels changing hands. Subdivision among inheritors accounted for only 347 of these transactions (under 3%). The number of owners rose by 9%. Although the facts are unknown it is likely that most of these transactions occurred in towns. The level of urban transactions everywhere is by repute high. However land is also changing hands in rural areas. Upcoming analyses by ADB of the land registration system and related data should throw light on real levels of transactions.

2 Customary and leasehold tenure systems are missing

Two gaps in the tenure profile in Nepal include a low level of formal rural leasing and an absence of recorded customary estates, such as owned collectively by self-identifying groups or communities. Legal provision for leasing exists but through a Contracts Act 1999 which is not geared to land leasing as relevant to smaller parcels and poorer lessees. One reason for the low level of formal land leasing is that up until amendment to the Lands Act in 1997 a lease of six months or more could establish a tenancy land right for the lessee.

3 Land administration is decentralized but blinds with paper

Land administration is formally decentralized to 75 District Land Revenue Offices. Those working with the system complain of key decisions having to be made at ministerial level.29 The system is paper-bound, vulnerable to manipulation and rent-seeking by officials. Computerization of records is underway with ADB funds, with up to 27 districts expected to have completed the task by the end of financial year 2008/09. Property maps and parcel maps are seriously outdated and available only in elderly fragile paper copies, and without coordinates indicated in many cases. Although statistics in district offices are bountiful,

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many doubt their accuracy. There are a host of administrative guidelines\(^{30}\) and volumes of forms to be completed. Transaction procedures are expensive, time-consuming and open to bribe-taking at no less than seven points (Box 7).

A Citizenship Certificate, funds for fees and an abundance of waiting time in queues are required to see the process through, thereby discouraging the poor. Collusion between landlords and officials is routinely cited as a problem. This has created room for private agents (dalal) who are well established in the environs of district land revenue offices, playing a mediating role between the government officials and service seekers and extracting arbitrary service fees. Presence of such go-betweens is alleged to have fueled the rent-seeking tendency of officials.

One advantage of the current system is that land tax is now paid and recorded at VDC level, necessitating copies of registration records sent to the community level. It is in the course of securing receipts or fulfilling the role of certifying that a property is owned by a certain person that more and more villagers discover

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they have more or less land than recorded or do not appear on the register at all.

4 Up to half of Nepal’s landholders have no legal entitlement to their land

There is a history of documentation of entitlements going back centuries and this is evident in the fact that 2,886,457 owners of property are registered entitlements, quite high in comparison to many other developing states. The records as they exist today follow systematic registration exercises variously carried out in the 1930s and again from the 1960s and 1970s. Assuming an average of one registered entitlement per household this covers 48% of the current population (est. total 6.024 million households in 2008).31 It may be assumed that the remaining 52% of households (3.13 million households) are either landless or do not have their house or farm occupation registered.

Strictly speaking, all 3.13 million households are property-less. Since 1806 a land claim without documentation (possession in the absence of written evidence) has been a basis for confiscation, or threat of confiscation (Chapter Three). Land Survey Regulations introduced in 1862-63 confirmed the importance of regularization of occupancy in recorded entitlements, and various titling exercises have followed since, reinforcing this principle. This culminated in the current Land (Measurement and Inspection) Act 2019 (1963) which lays down an elaborate system for registration.

How many of the 3.13 million households are without any form of stable land occupation and use is not known. It will be recalled that the Population Census 2001 found 24.4% of all Nepalese households without farmland of their own. This absorbs 1.5 million rural households, leaving 1.6 million households with access to house and/or land but not so registered. A rising number will be tenants in houses and apartments in cities and towns and may include well-off families. Most are likely to be poor urban or rural families. The majority are likely to be living on public land, either in the village or town or on the land of landlords.

In villages the poor often inhabit river bank or other marginal areas which officials claim should not be occupied or landlords claim as their own. This is so despite these families living there for several generations. Technically these farmers are regarded as squatters on village public land. In one village visited by this scoping study, 20% of households claimed that registration of their homes and farms was blocked during the 1970s by the single large

31 Using the projected total population as 29,519,114 people in 2008.
landlord claiming their area as part of his estate, and in whose name the area was ultimately registered. They had lived on those lands for no less than three generations. Review of 80 VDCs in 20 districts showed that 24% households had accommodation on unregistered land, 8% had houses on other peoples’ land and 68% had a house in their own land. From the same sample, 63.2% owned some farmland, 36.8% owned none at all (ILO 2003).

It seems reasonable to conclude that quite aside from those who are genuinely without any land of their own there are up to two million households who have longstanding but unregistered occupancy and use of lands.

5 The courts are for the rich

Disputes over land and houses are one of the commonest sources of dispute worldwide and in agrarian countries land cases routinely clutter up the courts. 32 In a setting which is neither post-conflict nor actively engaging in land reform, disputes are mainly over field boundaries, transactions and especially family inheritance and partition. In post-conflict settings disputes may soar to 70% or more of all court cases and frequently results in the establishment of a special land court or tribunal to handle these. A rising number of agrarian states now operate a dedicated land and housing section in their court system (Alden Wily 2008a).

In Nepal the courts reported an average of 40,000 land cases a year between 1999/2000 and 2003/04. These represent 31% of all cases in each year, the largest category of cases. Family cases comprise the second largest class and may also contain disputes over property. Curiously, given the known level of instability and grievance in land relations in the District, the District Judge in Rupandehi asserts that most of his cases are routine intra-family and boundary related cases. He was unable to identify the percentage of land cases which are between landlords and tenants.

In Saptari District, CSRC reported 1,293 pending cases relating directly to tenant eviction (CSRC 2003). In some of these, the land belonged in 2003 to Indian citizens. In others the receipt is considered illegal as it is issued by the landlord’s middleman kut collector and easy for the landlord and the court to dismiss as a forgery. There were also a number of cases filed by landlords against leading tenants trying to organize support for tenancy certificates, and who as a result had been forced out of their villages.

32 In Nepal the court system comprises 75 District Courts, 12 Courts of Appeal serving around six districts each and a Supreme Court located in Kathmandu. Each court hears both civil and criminal cases. Several judges may operate in each District Court.
Land Reform in Nepal – Where is it coming from and where is it going?

Cases involving land tend to take at least a year and sometimes several or even many years to resolve. The Three Year Interim Plan (2007/08 – 2009/10) refers to a backlog of 103,000 cases and proposes to establish land tribunals in those districts where these are most numerous. Many of these cases stem from reform challenges, and tribunals themselves may need to await the decision of the Land Commission and resulting enactment to be guided as to how to rule.

Court cases are as usual but the tip of the iceberg in property dispute, not least because fees, power and education are required to see the case through. As a rule Dalits and members of other disadvantaged groups do not attempt to use the courts. Charges are common that Judges are biased to the better off and/or require payment. Data was not available as to how many disputes are resolved at the ward or especially VDC level. The Rupandehi District Judge observed that land cases have fallen during recent years because these were being resolved through Maoist courts in different parts of the district.

District Revenue Offices also receive a steady number of complaints-cum-requests and regard many of their administrative actions as ‘solving’ one or other level of dispute, such as in the process of registering partition between heirs. Under the Local Self Governance Act 1999 VDCs are to have the power to hear and settle at first instance thirteen classes of dispute including boundary disputes, hidden and unclaimed properties, encroachment, forced entry and occupation of houses and cases of forced labour (Art. 33). Each VDC will form an Arbitration Board of three persons for this function (Art. 34). Right of appeal will be to the District Court. With some 40% of VDCs still without a Local Secretary, the law has not yet been applied, nor procedures prescribed.

### SUMMARY OF RELEVANT FACTS TO LAND HOLDING IN NEPAL

| Country area | 147,181 sq km (roughly the size of Bangladesh, twice the size of Sri Lanka, one quarter the size of France, Kenya or Texas in USA) Water accounts for 21% |
| Agro-Ecological Zones | Mountains 22.7%; Hills 50% (High Hills 20% & Middle Hills 30%); Tarai 27% (Inner Tarai (Siwalik) 12.78% & Plains Tarai 14.3%) |
| Population | 23.2 million (2001), doubled in 30 years (1971), est. 29.5 million in 2008 |
| Households (hh) | 4.2 million (2001) Estimated as 6.02 million hh in 2008; average hh size 4.9 persons. 76.6% = male headed |
Chapter two: Rural landholding in Nepal

<table>
<thead>
<tr>
<th>BOX 8</th>
<th>Population density</th>
<th>In-country distribution</th>
<th>Social identity</th>
<th>Social Distribution</th>
<th>GDP</th>
<th>Rural/urban population</th>
<th>Conflict &amp; displacement</th>
<th>Administration</th>
<th>Pop dependent agriculture</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>157 per sq km (2001), est. 200 per sq km in 2008</td>
<td>Half the population in 2001 (48%) lived in the southern low-lying plains (Tarai)</td>
<td>103 social groups: Caste Groups = 58.77% (53 hierarchical Hindu caste groups with Caucasoid origins including 18 groups of former untouchables (Dalits); Ethnic Groups (Janajatis) = 36.38% (comprising 45 groups of non-Hindu non-hierarchic Mongoloid origins); and others/ undefined = 5.37% (5 groups). No one group dominates numerically; 11 major ethnic/caste groups of which the high caste Chhetri is the largest (28%)</td>
<td>By zone: mountain groups comprise only 1% pop, the 36 hill groups = 65%, 52 Tarai groups = 32%, and unidentified = 2% By district: 55 of 75 districts contain one ethnicity or caste which numerically dominates (17 by Chhetri and 6 by Brahmans (upper Hindu castes) and 32 by indigenous groups (Janajati)</td>
<td>Per capita ranks 156 among 177 poorest nations. Low for South Asia but at 2.7% in 2005 rose faster than South Asia average of 1.9% from 1966-2005</td>
<td>Urban = 13.9%, tripled since 1971 (4%). Other figures give urban pop as 15% (2001). Rural = 88% or 3.67 million hh in 2001 down to estimates of 83% to 80% in 2008: Estimates of nearly five million rural households (4.819 million)</td>
<td>1996-2006: 12,407 conflict-related deaths including 2,000 non-combatants (common farmers) (INSEC 2005). Up to 200,000 people displaced but difficult to separate from widespread migration to Tarai from hills and to India and beyond. Most estimates of conflict-displaced in 50,000-70,000 range. By mid-2008, 35,000 displaced registered</td>
<td>75 districts in 14 zones and five development regions (Far Western, Mid Western, Western, Central, Eastern) with 58 Municipalities, 75 District Development Committees/Areas divided into 3,914 Village Development Committees/Areas, comprising 36,032 Wards (settlements/hamlets), average 1,042 hh per VDC and 116 hh per Ward in 2001</td>
<td>76% households; economically active population engaged in agriculture = 66% in 2001 down from 91% in 1981</td>
</tr>
</tbody>
</table>
Land Reform in Nepal – Where is it coming from and where is it going?

Agricultural employment: 81% of rural population with 63% self-employed in agriculture (1+ million mainly males work abroad)

Agricultural contribution: Growth in sector: 1997-2002: 3.3% 2002-2007 2.67%. Contribution to GDP is 33% down from 40.5% in 1996 and 60% in 1985. Remains the main contributor to exports: 82.5% (vegetable oil, after garments & carpets). Decline in agric share of economy is not the result of industrialization: remittances from out-migration now exceed export earnings, and comprise over half the national economy of Rs. 720 billion in 2008. Also decline in real value of land and labour productivity as input costs have risen.

Poverty incidence: Nepal ranks 138 among 177 nations in Human Development Index. Households below poverty line fell from 42% to 31% (1995-2004).

Poverty distribution: By urban/rural: most wealth in urban areas: 71.5% urban hh in highest quintile cf. 10.8% rural hh; 35% rural hh cf 10% urban hh in lowest quintile.

By region: most wealth in Central Region, least in Mid-Western and Far-Western; highest incidents poverty, infant mortality, infrastructure, education and other indicators.

By class & caste: agric wage labourers the poorest (55%) but self-employed farmers became less poor since 1995 (mainly from out-migration & remittances). Poverty highest among Dalits (former untouchables) (46%) and ethnic groups (Janajatis) living in the Hills (44%) and Muslim minority in the Tarai (41%) cf. upper castes and Newars 28%.

Inequality is rising by urban/rural, by region, and by caste. Decline in income distribution from 0.24 in 1984/85 to 0.41 in 2003/04 (NLSS 2003/04). By family: the larger the family the poorer. By landholding: the smaller the plot or landless, the greater the poverty. 40% of those with no land or land under 1 ha are below poverty line, a more distinctive correlate that literacy or caste (except for Dalits).

Rural/urban lands: Urban est. 3% Rural including rivers, forests etc: 97%

Resources: Dept of Survey, 2008: Forests = 42.7%; Grazing = 11.9%; Agricultural land: 26.8% (3,954,800 ha); Water = 18.5%

Forests: 5.8 million ha. 21% of forest (1.2 million ha) is managed by communities in 14,500 Community Forest User Groups involving 39% households (1.64 million hh)
Chapter two: Rural landholding in Nepal

**Cultivated land**: 3,408,373 ha = 23% national land area

**Ownership**: State = 73% of total area (forests, pasture, rivers & banks 10.5 million ha)

Private = 26.9% (cultivated and uncultivated land 4.1 million ha) but contradictions with Ministry of Land data which suggests 41% of land area under private holdings

Religious = 0.38% (56,083 ha) up from 40,000 ha in 1952

**Tenure forms**: Taxable private rights (Raikar), religious rights (Guthi entitlements, not taxable) and public rights held by Government, with some residual registered tenancy. Provision for leases from government land (public land) and between persons (rental agreements/leases)

**Feudal tenures**: As defined by denial of tenure of cultivators and systemic exploitation of their labour. (i) Raikar in its original form as State/Rana land over which allocatees had taxable inheritable use (as ‘tenants’) = 50% of land area in 1952; (ii) Birta inheritable grants of lands not subject to government tax = 36.3% area in 1952, abolished 1959. (iii) Guthi land = 2% in 1952; (iv) Jagir, Rakam etc = 7.7% area in 1952; Jagir was land assigned to officials in lieu of salary in Tarai and including duty to collect tax from occupants & users; abolished 1951; Rakam similar in Kathmandu Valley, abolished 1963

Within Raikar, Birta and Guthi compulsory/semi-compulsory labour control & exploitation systems ranging from bondage (e.g. Kamaiya, Hailya, Huruwa) to provision of forced labour on government lands, alongside widespread excessive crop share-taking from tillers. Unpaid labour systems abolished 1963, bonded labour in 2000. Although illegal, these exploitative relations widely occur, including on Guthi land

**Customary tenures**: Kipat, the communal land tenure of most Mongoloid indigenous groups, refashioned during 18th & 19th centuries and abolished as backward during 1963-1969. Acknowledged kipat covered only 4% of total land by 1952 with larger communal tenures unacknowledged or suppressed under Raikar and Birta grants including grazing and forest areas

**Registered owners**: 2,886,457 with 18,646,003 parcels (MLRM 2008); 47.6% all households

**Registered tenants**: 541,802 registered tenants (MLRM) = 11.24% rural households in 2008
### Land Reform in Nepal – Where is it coming from and where is it going?

- **Unregistered occupants**: hh with no registered land or registered tenancy = 2,296,050 hh (43% all hh in 2008)
- **Rural tenure**: Population Census 2001: 70.4% own only; 23.4% own + rent in; 6.3% rent only (c. 30% (absolute landless or with homestead only)
- **By zone**: Most of those renting land only or renting with own land are in Tarai
- **Rental systems**: Within 8.7% of land which is rented: 6% by crop-sharing (adhiya); 1.3% by fixed quantity of produce (thekka); 0.7% by mortgage; 0.5% by fixed amt money; 0.1% by exchange of services; and 0.1% by other arrangement
- **Agricultural holdings**: Total = 3,364,139 (NSAC 2001/02) of which 2,868,484 registered (MLR&M) = 85.25%
- **Average size holdings**: NSAC 2001/02: all Nepal = 0.8 ha; Tarai = 0.94 ha; Mountain = 0.73; Hills = 0.66 ha. MLR&M 2008: average farm size = 1.18 ha and for all holdings = 2.1 ha (i.e. contradictory data)
- **Owners**: 97.5% holders are household heads & synonymous with owners but swiftly changing with sharply rising female land registration (one third transactions in 2007/08 in names of women due to waiver of registration fees for women)
- **Cropping intensity**: highest on holdings of 0.5 ha or less, almost double that of >5 ha holdings (NSAC 1991/92 & 2001/02)
- **Fragmentation**: Declining; average per holding = 3.3 parcels, down from 4.0 per holding in NSAC 1991/92. Number parcels rises by holding size except those >10 ha; from av. 1.3 parcels per holding for class with less than 0.1 ha to av. 7.5 parcel for parcels 5-10 ha. By zone, most fragmentation is in the mountains (4.0). Over 26% holdings in Tarai are 1 parcel only. National average for no fragmentation = 21.3% all holdings
- **Distribution**: NSAC 2001/02: (excluding landless) Marginal up to 0.5 ha = 47.7% Small farmers 0.5 -< 3 ha = 49.4% Middle farmers 3 ha - <5 ha =2.1% Large farmers 5 ha + = 0.8%
- **Equity**: Land inequality Gini Coefficient based on 2001 Census Data: All Nepal = 0.544; By Urban = 0.642; Rural = 0.536. By zone - Mountain = 0.484; Hills = 0.489; Tarai = 0.569.
Chapter two: Rural landholding in Nepal

NSAC 2001: 75% holders operate < 40% land; 25% operate >60% land; 1% operate 7.3% of land (large holders), or 5% hold 35% of the land while 47% hold 15% land. Most common size of holding: 0.2 – 0.5 ha = 29% of all holdings

Viable farm size: Minimum for subsistence = 0.5 ha (15 kattha or 0.75 bigha). For subsistence plus surplus; varies by zone but average = 1 ha (30 kattha or 1.5 bigha)

Holdings <1 ha: 2,521,293 or 75% all holdings/farming households in 2001

Holdings <0.5 ha: 1,605,619 or 47.7% agricultural holdings = ‘marginal’ or functionally landless

Increase holdings <0.5 ha from 40.1% (1996) to 44.8% (2004)

Rural landless: Absolute landless = no land at all or house/homestead of own = est. 10% hh (min. 481,938 hh)

Arable landless: Arable landless at 24.4% includes some hh with homestead or urban house (NPC 2001). By region - agricultural hh without cultivation land = 1.176 million hh. Mountains = 7.5%; Tarai = 30.8%; Hills = 20.6%

3 Districts most landless: Sunsari = 51.5%; Morang = 48%; Jhapa = 38.9% (all Tarai) (NPC 2001)

3 Districts least landless: Jajarkot = 2.2%; Rukum = 3.2% (Hills) Jumla = 2.6% (Mountains) (NPC 2001)

Landless by regions: Central = 32.5%; Eastern = 28.8%; Western = 17.7%; Mid-Western = 13.8% Far-Western = 9.9% (NPC 2001)

Landless by zones: Eastern Tarai = 33%; Western Tarai = 13% (NPC 2001)

Landless by social group: High castes (Brahman/Chhetri) = 6%

Middle class/castes in Tarai = 11%

Newars = 11%

Hill Janajatis = 8%

Tarai Janajatis = 20%

Tarai Dalits = 43.98% (Dalits as a whole own 1% of arable land)

Hill Dalits = 15.32%

Muslims = 37%. Other minorities = 34%
Land Reform in Nepal – Where is it coming from and where is it going?

Landless by gender: Around 10% households have some land in women’s name and 6% houses but rising as data of MLR& M transactions in 2007/08 in 11 Kathmandu Valley Districts show 33.5% registered women as owners.

Bonded labour: Includes Kamaiya (in Tarai), Haliya (indebted ploughmen in mainly Far Western Region) and others. Kamaiya est. 37,000 hh of which 12,019 already resettled, 5,000 in process of resettlement in 2008 and 19,980 remain in need of settlement. Haliya estimated as >20,000 hh in west only, could be up to 100,000 hh overall.

Land cases in all courts: 45,178 in 2003/04 = 30.7% of all cases. Transaction cases at 13.6% cases may include additional land-related transaction litigation (Supreme Court 2008) 103,000 old cases pending land reform decisions.

Land dispute regime: District Court, Appeal Court (regional) and Supreme Court Legal provision for VDCs to have quasi-judicial powers, not implemented.

Land administration: Decentralized to district land revenue offices, with land tax only collected by VDCs & municipalities. Ministry of Land Reform & Management as policy-maker, fund dispenser & regulator.

Level of documentation: Unknown but may assume 48% of pop has registered entitlement leaving 3+ million hh without property or lands/homesteads which are not recognised even those most several generations or more occupancy.

Sources:
Chapter Three

LAND REFORM IN NEPAL
OVERVIEW

1. Feudal land relations in Nepal have characteristic origins in the organization of extraction (food, goods, labour) in service of a centralising hierarchy. Caste and then ethnicity would provide the shape along which extraction (in due course ‘taxation’) flowed, and eventually entrenched as distinctions between land owners, tenants and tillers.

2. The main instrument was assignment of King/State land to nobility with powers to extract rent and forward part of this to the central authority. Its power to cancel grant of these assignments (Birta) kept nobles loyal. Other mechanisms evolved to extract tax from tillers on lands not assigned to nobles, including the Jimidar/Tulukdar system of intermediaries, using local notables, and the Jagir system using elites, civil servants or military officers for newly colonised lands, especially the Tarai). Provision of compulsory labour (Rakam) added to subordination of rights.

3. By 1900 intermediaries were broadly synonymous with overlord landlords and the Birta assignments in practice entrenched as private rights to land. Penetration of capital hastened the process further. Registration of land interests and duties (begun in the 1850s) for the purpose of regulating taxation was a critical instrument towards this. By 1950 classes of land owners, tenants and tillers were pretty well fixed.

4. Land reform began immediately on the fall of the Rana regime in 1951, with a first attack upon the Jagirdar who were mainly members of the Rana family, and plans to improve the conditions of their tenants in the Tarai (first moves towards which had actually begun 50 years earlier). The conversion of all Birta grants into formal private property was also an early objective, achieved in the 1950s.

5. From 1961 reforms entered more classical agrarian reform, delivered in land laws between 1962-64 which sought to (i) do away with the last land tax-collecting intermediaries; (ii) fully privatise land rights as private property; (iii) unify and modernise land ownership and taxation in a system of survey-based registration managed by de-concentrated government offices in each district; (iii) improve tenancy conditions; (iv) achieve more equity in land ownership by imposing ceilings on farm size and redistributing the surplus to needy farmers; (v) enforce saving by farmers and create a credit source for them at the same time; and (vi) impose measures to improve farming practices.

6. A distinct programme of settlement schemes in the Tarai paralleled the land reform. Its objectives were not reformist although in practice these increasingly included provision of plots to some landless and land poor. This was mainly through the necessity to regularise squatter settlements stimulated by planned forest clearance and settlement schemes, these geared to wealthier farmers.

7. Little was achieved from the 1963 reforms. Following restitution of democracy in 1990s a more exacting land to the tiller reform was recommended (Badal Commission, 1994/95). This was to be delivered principally in a programme to abolish tenancy altogether, by enforcing partition of tenanted lands to registered tenants, given legal force in 1996/97. Ceilings were further lowered but not enforced. Sister plans to modernise agriculture and support services also failed (Agricultural Perspective Plan, 1995). A non-government driven initiative to provide land to bonded labour finally unfolded after 2002.

8. Broadly, after 55 years of reformism (1951-2006) main results have been –
   a. removal of intermediary and local overlord powers over land relations into the hands of the central state, with subsequent de-concentration of administrative powers to district offices;
   b. reshaping but limited demise in the classical alliance of landlordism and bureaucracy;
   c. conversion of feudal forms of land assignment and allocations of Kings/State land into fungible private property rights;
   d. repossession of uncultivated Birta and Jagir land into the hands of the state as public land;
   e. nationalisation of other pastoral and forest land held collectively by indigenous communities as de facto state property (public land);
f. slight limitation on the use of endowment of land for religious purposes (Guthi) as a tax haven and repository for above-ceiling land holding;
g. formal abolition of already sidelined and largely individualised customary landholding systems;
h. final entrenchment of the well-advanced distinction between those who own and those who till through new survey and registration which turned poorest households on marginal lands into permissive squatters of large holdings or public land;
i. some real and some spurious reduction in concentration of land ownership through mainly advance disposal of above-ceiling property by transfers into names of other family members, friends or caste-mates;
j. an early successful land-taking from elites through nationalising their forest and wasteland areas, but reneged on in part through subsequent survey and registration processes favouring large owners at the cost of the poor;
k. limited state-engineered redistribution including (i) official retention of above-ceiling land of only 29,124 ha (0.85% of cultivated land), around half of which was actually redistributed, the remainder still in the custody of owners; and (ii) commitment to redistribute 180,600 ha of tenanted land to 541,802 registered tenants, but delivery upon which is uncertain and bogged down by disputes;
l. addition of a welfare provision of 1,602 ha of public land to up to 14,000 former bonded labourers in one part of the country;
m. contribution to real rising agricultural daily worker wages;
n. abolition of compulsory labour for the state or royals;
o. liberation of landlord responsibilities to tenants and workers and de-securing tenant occupancy and conditions, as result of partial registration of tenants, limited delivery of a share of tenanted land and failure to enforce legal tenancy conditions against wrongful eviction, labour conditions and share returns;
p. a continuing absence of accessible and affordable credit for landless and land poor farmers;
q. sustaining indebtedness and polarisation with an equal or greater proportion of landless households than in 1951;
r. almost total absence of supporting agricultural reforms particularly as reaching small and marginal farmers, who remain the vast majority; and
s. a dramatically raised level of politicisation around land rights, with hardening of polarisation of interests along political party lines.

8. While there were successes, land to the tiller did not occur, with even pledges re partition of tenanted land affecting only 3.4% of the private land area. At least 50% of rural households still have insufficient farmland to even subsist from, and the proportion of truly landless in their ranks may be rising. Meanwhile 3% of owners still hold 17.3% of the private farm area.

9. Immediate causes of shortfalls were (i) lack of sufficient planning, (ii) investment, (iii) purposeful implementation and especially enforcement of measures. These in turn stemmed from weak will to will to succeed. This is most clearly seen in setting ceilings at a high level which would not have delivered the needed land even if they had not been easy to evade. Driving this was reluctance to fragment the landlord-state alliance and its reconstruction as a modern and ‘inevitable’ alliance of capitalist development.

10. These conditions caused even basic well-intentioned measures to backfire, most notably as affecting tenant conditions and rights.

11. Compounding these failures was the lack of a well-thought through approach to the linkages of redistribution to agricultural sector development and useful forward links into off-farm developments. The need for these was better formulated in the 1990s but lack of political will continued to impede adoption.

12. In the event, the reform initiative would be seized by non-state rebel actors, making it inevitable that land reform would return forcefully to the post-conflict agenda. The signing of the Peace Agreement in 2006 indeed saw a new phase of land reform announced, termed ‘scientific land reform’, reviewed in Chapter Four.
I. BACKGROUND TO THE NEED FOR REFORM

Feudal land relations are shaped more by state-making than caste or ethnicity.

Feudal land relations in Nepal have characteristic origins in the organization of extraction (food, goods, labour) in service of a centralising hierarchy. Caste and then ethnicity would provide the shape along which this extraction (in due course ‘taxation’) flowed.33

Key phases for Nepalese feudalism are therefore two: the first, related to the unification of multiple principalities by the Gorkha King, Prithivi Narayan Shah from 1743, achieved by 1769 in respect of the three kingdoms of Kathmandu Valley, and extended to the area that is now modern Nepal by he and his successors by 1800.

The second era followed, under the Rana regime (1846-1851) whereby the monarchy was retained but reduced to a figurehead with little political power, this being vested in the Rana dynasty serving as Prime Ministers.

The key instrument through which feudal property relations were entrenched was the conventional tool in which leaders issue rights to noblemen to control an area of the kingdom in order to extract goods and services from its local users and to forward a significant share of this to the head of state.

In Nepal this land granting was known as Birta. This built upon existing practices in some Indo-Ayran Kingdoms.34 In line with class habits and in this instance, caste rules, the nobleman did not till the land himself but was assigned complete control as to who did use the land, usually existing farmers whose rights were thus appropriated, and who became ‘tenants’. Rent was extracted from them. The Birta holder could assign his land right to heirs and by the 19th century could even sell his Birta right.

The land itself always belonged to the King/State. Issue of Birta assignments went hand in hand with the consolidation of the idea that the soil belonged to the King and then State (Raikar). In due course these private rights to hold and transfer the King’s land became more autonomous as fully private property rights. Raikar itself would come to mean private property, not state property.

33 The main source of information on which this section is based derives from Regmi 1977.
34 The first recorded Birta grant in Nepal’s area was in 1356 by a Dullu king in western Nepal (Regmi 1977).
In the interim, the threat of confiscation without compensation kept nobles loyal and the flow of extraction upwards. As shown later, it would only be in the 1960s that protection against this resumption was legally embedded, replaced by a more modern right of *eminent domain* – the right of a governing modern state to appropriate private property in the interest of public purpose and for payment of compensation.

Issue of *Birta* grants increased from the 1770s. Grants for religious and later philanthropic purposes (*Guthi*, for temples, places to care for the sick, etc) also increased.

*Guthi* was an even older practice but whose nature would also change with state-making from the late 18th century.35 It would become useful to noblemen and royal family members, for *Guthi* land could not be easily resumed by the King/State – and was untaxed. Most noblemen would place some portion of lands into *Guthi*. The line blurred between *Guthi* for genuine religious and philanthropic purposes and *Guthi* as a tax haven, especially where tracts of cultivable land were involved. During the 19th century, as transfers (in effect, sales) of *Birta* rights increased including to non-Brahman, some scions also put land into *Guthi* simply to forestall their descendants losing these and disrobing the dynasty of the privileges of exploitation of land and labour being landed afforded. They maintained significant control over these supposedly religious properties, generating new classes of *de facto* private *Guthi* land.

2 **As the State consolidated its control over land and systems for extraction matured**

A first rationalisation as to assignment of land rights was carried out in 1787. The King reclaimed *Birta* and *Guthi* lands issued within former principalities that were being used without documentary evidence of an original grant. This represented the first demonstration of the king’s Right of Resumption and was exercised as both reminder and towards regularising the system of assignments. A further rationalisation occurred in 1805-1806 and again in 1837-1840 with a good deal of cancellation of assignments.

A change in policy arrived with the dynasty of Rana Prime Ministers. To gain loyalty among noblemen the first Rana Prime Minister largely restored or replaced taken *Birta* with new land grants in 1846. Again this was justified as regularisation. A result is that no *Birta*-originated document pre-dates 1846.

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35 The first recorded *Guthi* endowment is AD 464 (Regmi 1977).
For the next century Rana Prime Ministers would issue Birta grants over an ever-expanding area, to the privileged elite favouring their own family members who formed a class of their own.

It goes without saying that Birta grants entirely overrode whatever customary entitlements existing in the locality (Box 9).
and leaving the Kingdom vulnerable in that area. This was the case for the Limbu who in 1774 received written confirmation that they could conduct their land relations in traditional ways. Chepangs in Pinda received similar confirmation (1847).

In other conditions government treatment was erratic, neither confirming nor converting lands held under customary tenure, and by default permitting its continuance in many areas, and yet permitting and encouraging land grabbing by Aryan immigrants to those areas. The Tarai was the most common and recent case.

Cultivated lands were more vulnerable to state control and direction. Sale of Kipat cultivation lands was banned in Kathmandu Valley in 1799. Ceilings on Kipat holdings were imposed in some areas in 1806 and 1836. Unpaid labour services for government were also obligatory in Kipat areas. Issue of Birta grants and Jagir concessions never took account of local rights of systems. More random encroachment by non-local communities was also common and over time customary holders would facilitate loss of land through their own actions, including distress sales.

For example, many non-Limbu for example settled in Limbu areas during the 19th century and a good deal of transfer of cultivation lands occurred, including by sales. Even more was lost through possessory mortgage, non-Limbu lending money and in return acquiring Limbu lands in default of swift repayment. Land loss was rife and Limbu out-migration to India followed. By the 1870s they were beginning to protest the loss of their lands. In 1886 the Rana Government sided with non-Limbus and converted all land which they had acquired by purchase or other means into Raikar. Only lands which Limbu were using at the time remained lawfully Kipat. This policy was modified a decade later. In 1896 repayments on loans by Limbu to government officials or moneylenders was suspended and a remission on homestead taxes granted for three years. Further sale of Kipat rice lands was banned by orders issued between 1901 and 1903. Limbu could still alienate wastelands and un-irrigated lands and did so under economic stress, did so. By 1951 only a third of the cultivated land in Limbu areas was still under Kipat.


3 The distinction between owners and tillers consolidated in the Rana period

Royal/State land which was not handed out as Birta remained Jagara (unallocated Government Land). With expansion of control and extraction of tribute paramount for the edification and exercise of the central state, systems for channelling revenue from these areas needed refinement. These too built upon pre-State practices.
A new regime of land assignment known as Jagir was developed to enable the state to expand into and colonise remoter, less compliant or resource-rich areas (Box 10). Taxation was also extended and regularised through consolidation of a village based regime of overlords in the person of tax-collecting Talukdar and Jimidar in the Tarai (Box 11). Extraction of labour for public works and service to the crown (Rakam) was reorganized and endowing just enough benefit to limit resistance.\(^{36}\) In different ways each of these systems further alienated the tiller from rightful ownership of the land he possessed and farmed, often for generations.

\(^{36}\) This was significantly milder than the Jhara system of compulsory labour which in 1808 empowered soldiers to seize sons and daughters for work tasks, mainly from middle and lower caste groups.
By 1900 the structure for the modern feudal state was in good working order. Production was controlled by the landed elite which comprised Birta owners and Jagirdars, who respectively embodied the aristocracy and elite bureaucracy. Their privilege could only be sustained only on the back of massive exploitation of labour, reaped from peasants through the cooperation of village overlords, the Jimidars and Talukdars. Their rights to the land they tilled were placed in grave jeopardy where it was not done away with altogether.

As Regmi 1977 describes, the alliance between the landowning class, the aristocracy and the bureaucracy seemed immutable; they needed each other: landowners needed the village overlords to collect rents and control the peasantry, and the village overlords needed the political backing of the aristocracy and its bureaucrats.
4 Things began to fall apart with entry into the 20th century

With penetration of capital the alliance of landlords with the state began to crumble. By 1900 those appointed or sent to extract taxes were becoming landowners in their own right, not least through money lending and the indebtedness of labour this created. They also charged higher rent (crop shares) than the Rana Government stipulated. Not only did peasants have to pay most of their crop to these new overlords, they had to pay state taxes through elites. They were also subject to random coercion of their labour by local overlords, exercised without permission of the central authority. Community rights in residual Kipat areas were also being eaten away by encroaching commoditisation with land sales common.

At the same time, Birta owners were increasingly absent from the farm which they had never tilled anyway. In some cases this absenteeism was to the advantage of their tenants, the better-off establishing de facto control of these lands. By the 1920s a class of upper peasants was emerging and which did not depend upon either the aristocracy or the bureaucracy to sustain and entrench its privileges. In due course, some of this group would be able to claim ownership rather than tenancy rights, in the process of abolishing Birta. Meanwhile polarisation advanced, as these upper tenants hired labourers and retained serfs. Discontent rose along with this.

By the time of the fall of the Rana regime in 1951, land relations were ripe for two trends, in addition to growing demands by landless farmers for land; the privatisation of land interests as modern property autonomous from social relations and meeting demands for sharecropper protection, those who were the tenants of the legal tenants (mohi).

5 The first tenancy reform was in 1906

Moves towards both had been evolving for years. The 1906 Land Law prevented Birta grantees from evicting tenants if they paid their rent. Rent levels were reduced to those permissible on Raikar lands which had not been granted and whose landholders were official tenants (mohi). Nor could the Birta owner resume farming the land himself or take land for houses above five ropanis in the hills or 1.5 bighas in the Tarai. Not even this area could be taken if it left the legal tenant without sufficient land on which to subsist. Various other rules to limit exploitation ensued; for example, in 1932 rules were put in place to limit how much Ukhada landlords could charge tenants in the three Tarai districts where this system operated. However all these measures were relevant to upper
peasants, those regarded as the legal tenant, excluding the majority tilling the land under their control.

6 Turning land assignments into private property

Commoditisation of rights also gathered pace in this period with advancing capitalism. The active instrument was registration, the handmaiden of privatisation and associated evolution of taxation. Recordation of grantees entrenched their entitlements as property rights. Those who actually cultivated the land were formally dispossessed, downgraded to legal tenants, sharecroppers, workers or serfs.

Recordation of land grants was first undertaken between 1854 and 1868. Individual rights and associated revenue obligations and rights were compiled in registers, indicating the right-holder, the area of land held by him and the total payment due thereon. This formalised his ability to rent out, mortgage or even sell the lands and cancelled any other rights existing over that parcel.

Raikar, Jagir and Birta rights were all tradable by the 1880s. The 1888 Legal Code made it lawful for Birta to be passed to heirs and Jagir to be transferred or mortgaged. By 1921 the right to sell and mortgage any rights descending from Raikar (State Land) was recognized by An Order Regarding Registration of Land Transactions. By then only uncultivable lands were left for government to allot, referred to as wastelands.

Regulations in the 1930s furthered privatisation and by which time the meaning of Raikar had shifted from ‘state land’ to meaning private property. The holder was still a tenant and Government still did not need to pay compensation when it wanted the land for a public purpose. However sale, mortgage and tenancy were legal without any restriction – so long as land tax was paid.

Land measurement was part of the integrated land registration and taxation system. The four grade system of land graduation (Abal, Doyam, Sim and Chahar) for revenue purposes had existed for several centuries in the Kathmandu Valley and was formally extended throughout the country in 1919 along with an elaborated gradation for rice lands.

7 Absenteeism and tenancy were natural corollaries of feudal ownership

Payment of taxes was the conduit and proof of ownership. As Regmi (1977) observes, it mattered little to the feudal state who was tilling the land as long as the taxes were paid. With the origins of land endowments in the hands of non-
tilling Brahmans, the dis-connect was even better sealed. At no time was there a requirement that Birta grantees or other overlords work the land themselves. Instead, with rent and labour extraction organised through more local intermediaries they could concentrate on money-lending or non-agricultural occupations.

II. LAND TENURE IN 1951

In summary, at the time of the fall of the Rana regime in 1951, these landholding regimes were in place -

i. **Kipat Land**: this referred to the residual areas where customary land regimes were legally acknowledged as operating, by then no more than 4% of the land area. The main case was the Limbu community in eastern Nepal embracing six districts but not all of which by 1951 was recognised as Kipat, much of it having been privatised by then as Raikar. Kipat was subject to tax and/or compulsory labour for government.

ii. **Guthi Land**: this included a variety of untaxed properties from temples and monasteries to markets, schools and hospitals as well as expansive arable lands, all of which had been allocated over centuries to priests or charitable bodies for religious and philanthropic purposes, or for the upkeep of those who provided these services. It is unclear from Regmi’s analysis whether the 40,000 ha noted includes the many private lands earmarked by owners as Duniya Guthi as a means to avoid paying tax and retaining rights of transfer and bequest.

iii. **Birta Land**: by 1951 these amounted to private property rights, held by especially but not only Brahman/Chhetri. These rights could not be easily retracted, although government still did not need to pay for the land if it was needed for public purposes.

iv. **Jagir Land**: by 1951 this was also a class of de facto private property but legally only a lifetime usufruct held over vast Tarai lands by managerial assignees of the State (*Jagirdars*). Most were members of the Rana family.

v. **Raikar Land**: by 1951 this had ceased to mean Crown land/State land and instead had the connotation of private lands, directly taxable by the State. However in 1951 the Crown/State still had the right of resumption, without compensation.
vi. Jimidari Land: this referred to lands which had been acquired not through direct grants or assignment of lands by rulers but through the self-help efforts of revenue collectors on Raikar (state lands) using their position to exploitative benefit. The Jimidari system emerged in the Tarai during 1861-62. As well as gaining large farms through various exploitative routes, the Jimidar lawfully retained Jirayat, parcels given them as part of their emoluments. An old form of Jimidari existed in hill areas in the persons of Talukdars, and the system around which was reorganised as early as 1820. Although different in respects by 1951 these two sets of village level intermediaries of the state had become major local landowners/landlords in their own right by 1951.37

vii. Ukhada Land: this was a sub-version of ownership arising from the Jimidari tenure and which operated only in three Tarai Districts (Nawalparasi, Rupandehi and Kapilavastu). This had permitted Jimidar to collect cash rents from registered landholders and limited their right to evict them. Nor were Ukhada tenants required to provide unpaid labour to the Jimidar.

viii. Rakam was the term broadly applied for state exaction of compulsory unpaid labour for public purposes but by 1951 had an element of tenure implied. It was limited to the original three Kathmandu Valley kingdoms and a few related adjacent principalities incorporated early into the Kingdom of Nepal (1750-1760). It had origins in Jhara, a more primitive forced labour regime. Under the unified state this became more organised, commuted into specific services to be rendered by one or other assigned community or members of a community. To limit discontent these unpaid labourers were also guaranteed occupancy on the Birta, Raikar or Guthi lands on which they lived and at times redistribution or allocations made in their favour (c. 1854). This occupation was consolidated into records, the last compilation of which was in 1896. In 1951 Rakam holders were still obliged to provide unpaid labour (up to 72 days a year) mainly to the benefit of members of the Rana family. With the downfall of the Rana regime along with constitutional abolition of compulsory unpaid labour, they were in a good position to be acknowledged formally as land owners.

37 An even older system had been Rajya, introduced following the unification of Nepal in 1774, doing away with small principalities but allowing the chiefs or kings of certain remote or less pliable principalities to collect tax on specific land areas, although without the authority to sell or reallocate the land to different tenants. The tax was paid in kind and services. This was mainly in the Hill region and especially the Kathmandu Valley. This had given way during the 19th century to the Jimidari system.
Tenancy kept the above systems in place. Tenants comprised both legal tenants on Raikar land and their own sharecropping tenants in these areas and also in Birta and Guthi lands. In addition, the term tenant can be extended to those living on the farm as workers and/or in serf relationships. It will be recalled from Chapter Two that Regmi (1977) estimated that 80% of citizens were tenants, some holding land but all subordinate to overlords and/or landlords. A decade later (1961) tenancy was formally recorded as ranging from 19% to 46% for irrigated lands and from 10% to 38% for dry lands, clearly referring to a more limited number of farmers, and excluding workers and serfs.

Laws regulating tenancy were in place as shown above but afforded little protection against arbitrary eviction for any other than the upper class tenants, the official mohi. For the rest there were no limits to rents, no incentive for tenants to increase output since the larger share accrued to the owner or overlord (usually two-thirds of the main crop) and no easy way for tenants let alone bonded labourers to reduce their indebtedness – other than absconding the farm and going to the tea estates of India and Burma. Money-lending and indebtedness was entrenched as the route through which landlords controlled labour. The names of these tenants and workers appeared nowhere in the voluminous land tax assessment records. They were an invisible class.

### III. COLONISATION OF THE TARAI

1. The Tarai was the site where the complex of land relations most dramatically played out and would drive the need for reform

Up until unification in 1769, Hill kingdoms and principalities used the Tarai for timber and periodic winter cultivation, at which time the threat of malaria was
lower. Thereafter it was treated as a colony by Shahs and Ranas and as a buffer against Indian expansion. These Kings and Prime Ministers regularly granted large tracts of land to themselves, their families and their *bhardars* (members of the nobility) as tax free *Birta* lands or as *jagir* land assigned to high ranking military officers and officials in lieu of salaries. Shrestha (2001) records that the area of whole districts could fall into the hands of Prime Ministers; Jung Bahadur Rana, the first Rana Prime Minister and his family held the far western Tarai, comprising the Banke, Bardiya, Kailali and Kanchanpur districts. In 1862 and 1874 formal *Birta* grants were issued to cover these lands.

Colonization of the Tarai could not go ahead without the manual labour of peasants to reclaim the land (i.e. clear the forest). A first scheme for settling hill people in the Tarai was launched in 1796. Failing to attract the requisite numbers, King Rana Bahadur launched a programme to attract Indian settlers in 1798, contractors obliged to settle a specific number of immigrants each year in return for land allocations for themselves. Following war with the British (1814-16) this was halted and not revived until the establishment of Rana Rule in 1846. Rana Prime Ministers exempted immigrants from paying tax for the first decade and each was rewarded with an additional *bigha* of land for every 10 *bigha* cleared. Occupation of Tarai grew steadily over the next century, largely implemented by private entrepreneurs.

### 2. Reshaping colonization for political ends

After the First World War the Rana set up a more formal attempt to encourage hill people to migrate to the Tarai beginning with a scheme in Rapti Valley (1923). The aim was to counter emerging anti-Rana sentiment among the now substantial Indo-Ayran Madheshi presence in the Tarai. It was also meant to attract Nepalese back from Darjeeling, Assam, Bengal and Burma to whence indebted peasants had migrated, again to further pro-Rana support.

Military officers were again to the forefront of settlement development as controllers and beneficiaries of land. Landless peasants only slowly began to be included in the schemes, entitled to credit and several areas made available specifically for emancipated slaves (1924). The response was limited. As Shrestha (2001) points out, the poor and oppressed correctly guessed that class and caste relations were simply being transplanted in the Tarai.

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38 Shrestha 2001 records that there was no shortage of immigrants as a consequence of the British Zamindari Law in Bengal and Bihar in 1793 which downgraded tillers to tenants.
Meanwhile the occupancy and rights of indigenous Tharu and Dhimals in the Tarai were steadily undermined, losing land first to Indo-Ayran immigrants from the south over the 18th and 19th centuries, then compounded by southwards migration during the 20th century by Hill people, especially after 1950. Many would in due course become Kamaiya, bonded to these wealthier immigrants.

3 Moving from colonization to settlement schemes to pre-empt discontent

The over-throw of the Rana autocracy in 1951 would see the Tarai land colonization strategy expanded to social programme. New settlements were planned in the Tarai but this time as an official government programme mainly to increase agricultural output and to relieve serious pressure in the Hills, oriented to middle farmers, not the landless. It was opportune to use the scheme to additionally settle victims of floods and landslides in 1954.

As in 1923, Chitwan’s Rapti Valley was first targeted, in a programme funded by the US Operation Mission in Nepal, the forerunner of USAID. This went hand in hand with malaria eradication. By 1956 5,233 households had been granted plots totaling 28,000 ha. Settlers were mainly from well-off families. The project continued for a decade, marred by extraordinary levels of corruption (Shrestha 2001). Its efforts were many times overrun by spontaneous settlement by Hill people throughout the Tarai. These began to take shape through the 1950s as an acknowledged landless people’s movement.

This was encouraged by the Nepali Congress Party (NCP) which swept to power at the first election called by the King in 1959, including on a platform of agrarian reform (see below). This was the final straw for King Mahendra who correctly felt his position and those of his class threatened. He launched in effect a coup, dismissed the elected Congress government, jailed Prime Minister Koirala, and reestablished himself as political leader in a mode reminiscent of the Ranas.

The King also sought to increase his support by launching further settlement schemes in the Tarai. The Nepal Resettlement Company was created in 1964 to resettle returning Nepalese evicted from Burma in 1962 and other returnees from Indian states, as well as hill migrants –In the event it settled only 1,504 landless migrants (‘Sukumbasi’)

39 on 3,200 ha under the Nawalpur Resettlement Project. The Department of Resettlement was formed in 1968 to supervise eight zonal Resettlement Offices. These brought 37,000 encroachments under organized settlement and registration of occupants.

39 The name Sukumbasi allegedly originated as a description of returnees from Sikkim who had no land to return to. Sukumbasi today means landless people.
Needless to say, encroachments continued. A World Bank Report in 1978 estimated that 7,000 families were spontaneously relocating to the Tarai every year. Two resettlement officers reported that there were at least 10,000 landless and spontaneous settler households in each of the 20 Tarai Districts (Shrestha 2001).

4 Responding to proclaimed land reform by moving to the Tarai

It is significant that organized settlement schemes were parallel rather than integral to the land reform on-going during the same 1960s-1970s period. This is because their objectives were different, and in reality targeted to farmers who had a little land in the hills and to returnees considered a cut above landless and those with little more than shelter and a marginally sized plot. It was the so-called spontaneous settlements or squatter camps which included the landless and poor.

In practice relatively few from these sectors actually obtained land through regularization of the squatter settlements. A survey by Shrestha in 1988 found that among 800 migrants since the 1950s, 41% were still landless and 24% near landless. One third of those who had been given land became landless again due to debt. At most the schemes were designed as a small safety valve to rising challenge to the elites. As Shrestha observed

‘... land colonization .... is the great conciliator between the vested interests of the large landowners and the survival needs of land hungry peasants. On the one hand, it allows the state to avoid executing any meaningful land redistribution policy and hence rupturing large landowners’ power base ... it allows the landed class with an opportunity to acquire land in new areas, thereby geographically expanding their hold on power... So they have nothing to lose, for it does not involve land reforms, but everything to gain from the implementation of land colonization projects. In addition the state sees land resettlement as an astute tactical move for it not only ossifies the potential peasant movements but also has the potential to gain peasants’ political backing... as it is viewed by them as a vehicle to acquire land and start a new life” (Shrestha 2001: 158-59).

IV. FORMAL LAND REFORM IN NEPAL

Land reform in terms of altering the relationship between landlord and tenant and distribution within the private sector would slowly take shape during the 1950s and continue until the present. Table 27 summarises the guiding
legislation and events. Section IV assesses the process. In overview, reform has unfolded in these phases –

First Phase 1951-1960: More about landlords than peasants

Gradual reformism battled for space during this period and in which the King and the Nepali Congress Party increasingly parted ways. This reformism lurched from modernization (i.e. privatisation of rights) to redistribution of rights in favour of tillers. The result was a lot of rhetoric, some commissions and a series of laws which were largely not applied. In delivery, most focus was upon modernization, all rights brought into a single private-public land holding regime and turning Raikar and Birta holdings into full-fledged and private property. This curtailed excessive landed privilege held by aristocrats, not least in their failure to pay tax on their lands (Birta) and in reducing the reach of their tenure (forests and wastelands were taken away in principle but not always in practice). At the same time right holders saw their interests entrenched, as less vulnerable private property. Almost no progress was made on tenancy conditions.

Meanwhile, clamour for reform gathered throughout the decade. Among the populace it began to take on its future shape as the landless people’s movement (Sukumbasi). The official focus took shape under the leadership of the Nepali Congress Party (NCP), which won the election called by the King in 1959. In December 1960 the new Prime Minister Koirala stated that

‘The economy of the nation has so far depended on land alone. Now we have to discover alternative sources of employment for the establishment of a new industrial and socialistic order. The yield from the land alone is insufficient to bring economic development. The abolition of the Birta system and the levying of taxes are very ordinary aspects of our program. We are planning to take the country to the level of the advanced countries of the world. ... It is the tillers alone that must own the land...’ (cited in Shrestha 2001).

It was allegedly this speech which proved the last straw for King Mahendra who four days later dismissed the Congress Government. Nonetheless, the issue would not go away.

Second Phase 1961-1989: Redistributive reform without teeth

Following the above flirtation with multi-party democracy (1960-61) the King launched his own version of democracy in the party-less Panchayat regime, extending from the village to his Cabinet, and backed up by the military. Despite this royalist and elite alliance, his ministers were forced to attend to inequities
in farm ownership, not least through the rising number of ‘encroachments’ on the Tarai, described above.

The version of reform adopted borrowed directly from moderate redistributive reforms emerging more widely in the region and as espoused by UNDP as agrarian reform. By 1963 the Ministry of Economic Planning was echoing the position of Koirala -

“Unless processes are set in motion which will draw labour and investment capital from agriculture and set them to work in non-agricultural sectors, economic growth will not take place”. Concentration of land in the hands of the few was also recognised as “unhelpful to development and democracy”.

Instruments of reform were laid out in the Lands Act 1964, still the central land reform legislation today. This was to be implemented over three years in 16, 25 and then 34 districts. Five instruments were to be applied: (i) abolition of intermediaries collecting taxes; (ii) imposition of ceilings and redistribution of the surplus to needy farmers and institutions; (iii) rent control and other measures to improve the security of tenants; (iv) compulsory savings and credit by farmers; and (v) imposition of measures to improve farming practices. Sister laws were enacted to improve registration and made a new attempt to abolish Ukhada, Jagir and Rakam practices.

In practice ceilings were weakly enforced, little land was redistributed and landlords rather than tenants often gained from the new rules. The saving scheme failed and no alternative credit support measures were put into place.

The failures to make real changes would see the landless peoples’ movement crystallise, mainly in the form of landless and land poor families from the hills migrating to the Tarai. Even when included in the ranks of official settlers, the poor generally failed to secure parcels, often due to inability to pay the bribes levied by contractors and later officials, under whose aegis schemes were placed in the late 1960s. Schemes to regularise squatter invasions remained the routine response.

In 1973 the Department of Settlement acknowledged that elites had benefitted most from the schemes, that issuing entitlements had encouraged rather than suppressed migration, that land distribution by forestry and other officials was continuing alongside attempts to restrain new settlement, and that there were signs of a professional ‘landless’ cadre emerging. These were usually genuine landless who secured titles, sold these, then moved on to new areas and repeated
the process. The Department’s report also acknowledged that Government was sanctioning logging operations at the same time as claiming to halt clearance.

Third Phase 1990 – 2005: Moving more firmly towards land to the tiller reform

This followed the establishment of multiparty democracy and some renewed interest in redistributive reform. This was activated mainly by NGO demands for attention to the fate of bonded labour in the Tarai (1992). The High Level Land Reform (Badal) Commission (1994-95) laid down new ambitions, with lowered ceilings, abolition of tenancy altogether, conversion of most Guthi into private land, liberation of bonded labourers, and an approach which located redistribution much more firmly within a wider agricultural investment and development programme, being developed at the same time. Amendments to the Lands Act in 1996/97 and 2001 supported partition of tenanted land but were only slowly implemented and failed to embrace the majority of tenants. It took six years for ceilings to be grudgingly lowered but neither this nor the establishment of a minimum farm wage in 2003 were enforced. Dismal performance by the sister Agriculture Perspective Plan (1995) saw little change on the ground and agricultural growth fell. Kamaiya were finally liberated in law in 2002 and rehabilitation of a significant number effected.

Fourth Phase 2006 - 2008: A new commitment -- but in what direction?

This is addressed in the following chapter. Plans abound but are strangely undifferent from those which have gone before. The only new achievement on the ground is a rise in registration of land by women, triggered by a waiver for themselves and other disadvantaged sectors. Bonded labourers have yet again been legally liberated but in practice remain in dire conditions. Pursuit of the commitment to provide marginal parcels of public land to liberated bonded labourers, a tiny sector of the rural population, continues.

### SUMMARY OF LAND REFORM MEASURES: 1951-2008

<table>
<thead>
<tr>
<th>PHASE</th>
<th>1951-1960</th>
<th>IMPLEMENTATION</th>
</tr>
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<tbody>
<tr>
<td>1951</td>
<td>New Constitution bans discrimination on basis of gender, caste or religion for first time</td>
<td>Ineffective</td>
</tr>
<tr>
<td>1952</td>
<td>Official acknowledgement that rising social unrest due to tenure system in the Tarai (Nepal Gazette vol. 122 1952)</td>
<td>Led to commissions</td>
</tr>
<tr>
<td>1953</td>
<td>Jagir abolished with provision for government employees to be paid cash salaries only. Jagir had awarded army officers and officials rent-seeking control over lands in lieu of salaries</td>
<td>Many gained ownership of these lands</td>
</tr>
</tbody>
</table>
### Chapter three: Land reform in Nepal

#### 1952-53
- **Two Commissions on Land Tenure Conditions sent to Tarai to investigate landlord-tenant relations.** Recommended (i) abolition of Jimidari system with tax collection taken over by Government; (ii) tenants should get receipts for share/rent paid and conditions of tenancy to be laid down.
- **Put recommendations into law (1957) but only (i) implemented.**

#### 1954
- **Interim Constitution abolished Rakam — compulsory and/or unpaid labour mainly to royals and Rana landgrantees.** Successful but many other serf-like labour relations continued like kamiya, haliya, haruwa.

#### 1954-56
- **First phase of US funded Chitwan Rapti Valley Development Project, intended to settle hill people of all classes but in practice served mainly middle and wealthier groups in search of new land. Project to last until 1961.** Early successes not continued with increasing corruption in the project and sister projects.

#### 1956
- **Preparation of Land and Cultivators Records Act 1956:** made provision to organise village committees to prepare records on prescribed formats and submit these to Land Revenue offices. Initiated in two districts (Butwal and Saptari) but discontinued. Landlords used the forms to relocate lands under different names.

#### 1957
- **Lands Act:** the first land reform (i) limited rent to maximum 50% of crops, prohibited extraction of tenant’s labour above agreed rental share, gave legal security of tenure for tenants who had farmed more than one year, interest rates limited to 10%; (ii) Also terminated fiction that Raikar landholder was a mere tenant of state, raising statutory Mohi to ‘landowner’ and equivalent to a Birta grantee except had to pay tax.
- **(i) not applied**
- **(ii) applied**

#### 1957
- **Private Forest Nationalization Act:** Transferred ownership of all forest to government, without compensation. Targeted Birta owners who had forests within their grants in especially the Tarai. In the process also dispossessed forest rights of indigenous communities. Implemented.

#### 1959
- **Birta (Estates) Abolition Act:** (i) cancelled all Birta rights (tax-free grants of land to favoured individuals) making these subject to normal taxation; (ii) All Birta forest and non cultivated land reverted to the State; (iii) Law additionally prohibited unpaid labour and payments in other than agricultural rents in cash or kind.
- **(i) Implemented, benefiting holders who gained even more confirmation of their rights but now taxable, and further sent tillers into the non-right category. Formal conversion of birta land to raikar took time, continued until late 1990s**
- **(ii) Implemented**
- **(iii) Not fully applied**

#### PHASE II 1961-1989 LAUNCHING MODERATE LAND REFORM IMPLEMENTATION

- **King adopts a moderate version of land reform, buying into donor-promoted vision of redistribution as necessary to promote growth in agriculture and stimulate industrialisation. Action to provide credit to peasants, fertilizer, irrigation & cooperatives laid out in Third Plan 1965-70. Also sought to advance cadastral survey and new registration of holdings.** Institutional change implemented but with little impact on land relations and limited agricultural support activities. Cadastral titling was advanced.
**Land Reform in Nepal** – Where is it coming from and where is it going?

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961</td>
<td>Rajya abolished through taxation reforms; Rajya was a longstanding system through which some fiefs had retained the right to collect land revenue in return for pledging their sovereignty and loyalty to the state of Nepal, forwarding portion to state.</td>
<td>Applied</td>
</tr>
<tr>
<td>1963</td>
<td>Land (Measurement and Inspection) Act; this would be amended eight times, latterly 1999. Provides for survey and registration, notably for government lands to be first adjudicated and registered, then private lands. Refined the land classification system with grades within paddy, non-paddy and other lands. Law drew crucial distinction between public and private lands and between Government and Public Land, the latter being national land under either control of central state or local district and VDC governments.</td>
<td>Applied. Provided the procedures for survey and registration but limited often to better-off; poor found their plots not registered.</td>
</tr>
<tr>
<td>1963</td>
<td>New Civil Code replaced codes begun in 1854. Abolished untouchability. Also again abolished Rakam (1954) a practice in the Hills and Kathmandu Valley which compelled tenants to perform services for landowners as a form of tax. Would be further entrenched by Lands Act 1964 which prohibited tenants to perform personal tasks for landowners.</td>
<td>Reiteration of rights without real enforcement.</td>
</tr>
<tr>
<td>1963</td>
<td>Agriculture (New Arrangements) Act: to ensure implementation of previous laws abolishing Jagir, Rajya and Rakam.</td>
<td>Implemented but did not remove exploitative relations on farm.</td>
</tr>
<tr>
<td>1963</td>
<td>Lands Act, to be amended eight times: five times directly (1965, 1966, 1986, 1996, 2001) and through Judicial Administration Reform in 1986, the Judicial Administration Act in 1996 and an Act to Amend Some Nepal Laws, 1998. Often repeated provisions which were already provided under new laws but unenforced. Provided for the following – (a) Abolition of intermediaries collecting taxes (the Jimidari system) through transfer of control over tax and administration from landowners and Jimidars to government District Land Revenue Offices, and later to VDCs and municipalities, and overseeing new Ministry of Land Reform and Management. In 1964 abolition of Jimidari confined to Raikar lands, leaving Raj Guthi lands autonomous, Jimidars permitted to retain their personal lands (Jiriyat) core parts of which had been assigned to them originally as part of their emolument. Implemented but subject to corruption with some Jimidari retaining much more personal lands than due (Jiriyat). (b) Removal of landlordism on private lands by State: transfer of all land except Guthi religious land into Raikar, definitively termed private land and holders as land owners, not the State but subject to taxation.</td>
<td>Largely ineffective including its amendments. Has failed to significantly distribute land and has made many tenants less secure. Failed to address landless or bonded labourers; geared only to tenants.</td>
</tr>
</tbody>
</table>
Chapter three: Land reform in Nepal

(c) Redistribution through imposition of ceilings, by houses and farmland and by zone (Tarai, Hills, Mountains) with compensation to owners to be in cash (10%) and interest-bearing Treasury Bills with interest at 3-5% and able to be used as collateral (90%).

Largely failed. Staggered implementation and prior announcement of districts to be covered gave time to owners to manipulate their holding sizes. Bonds were never issued. Tenants and owners were not put on equal footing; the former had lower ceilings and also did not get the same compensation for loss of land access above ceiling.

Lowered ceilings further in 2001 (see below).

(d) Tenancy Reform including

(i) Rent regulation with prohibition of rent above 50% of product of main crop and

(ii) Certification of tenants (Registered Tenants).

Failed. Ineffective for majority and de-secured their land access and occupancy. Rent regulation applied only in cases of registered tenants. As many landlords refused to issue certificates; most tenants unregistered.

New tenancy reforms in 1997 and 2001 (see below)

(e) Credit support including -

(i) Compulsory Savings Scheme for grains: 5% to be deposited by both owner and tenant with VDC to be returned with interest in 5 years

(ii) Regulation of interest on private loans to 10% with interception of credit indebtedness to private money lenders

Failed.

(i) Rs. 120 million collected by 1969 but abandoned by early 1970s in face of corruption and lack of interest to return.

(ii) Not applied or monitored.

(f) To improve farming practices by

(i) Commission for Land Use Regulation to be established to implement programmes against fragmentation & for consolidation and

(ii) Incentives for farm cooperatives by 10+ land owners

Failed.

Never implemented

Land Administration Act

Complementary to the Lands Act, making provision for the establishment of Land Administration Offices in those districts where the Lands Act was made effective, in accordance with the phasing of the Lands Act in three tranches. The law laid out the format for maintaining land registration records and laid down procedure for land revenue collections.

Implemented

1963

On Registration entered into Civil Code (Muluki Ain):
Made provision for issuance of registration certificates for adopted sons and daughters, division of immovable property among separated family members, sale or relinquishing of one’s claim, pledge against collateral, granting claim right after death, and exchange transactions.

Applied unevenly

1964
<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
<th>Outcome/Implementation</th>
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<tbody>
<tr>
<td>1964</td>
<td>Nepal Resettlement Company established to resettle by now thousands of migrating hill people into the Tarai, forming spontaneous settlements (squatter camps) and carrying out a great deal of forest clearance. First scheme was the Nawalparasi Resettlement Project, mainly to resettle Nepalese evicted from Burma. Settled 1,504 households on 3,200 ha. Although on paper the landless to be settled in these schemes few were able to pay for the costs of regularisation legally and in practice required. Implemented to benefit middle and rich farmers.</td>
<td></td>
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<tr>
<td>1964</td>
<td>Guthi lands to be placed under a corporate entity and all rights and liabilities of government delegated to the Corporation; corporation formally instituted only in 1972. Not implemented until 1972.</td>
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<tr>
<td>1967</td>
<td>Lands Act (second amendment): (i) Abolished holding of land on communal basis (Kipat), affecting property systems of indigenous communities and mainly Limbu, by converting all holdings into raikar. Some areas granted right to continue collective holdings of especially grazing or forest land in order to secure their support for the Panchayat system, but these exceptions revoked by 1974 by nationalization of pastures law (ii) Act also promised confiscation of land wrongfully acquired, targeted sales of land to avoid ceilings (i) Unjust: converted customary lands into private lands with loss of collective system of land ownership, transfer and management (ii) not implemented</td>
<td></td>
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<tr>
<td>1968</td>
<td>Department of Resettlement set up to replace the Company, mandated to regularise the tens of squatter settlements in the Tarai by issuing entitlements. Geared to landless and land poor but in practice again only those already with land and resources could successfully secure rights, due to costs and frequent rent-seeking by officials. Some 37,000 migrants settled by Eight Zonal Resettlement Offices. Successful – for the better-off</td>
<td></td>
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<tr>
<td>1971</td>
<td>Commission investigated corruption and abuse of the ceiling rules including avoidance with collusion of officials. Ineffective, no clear action resulting</td>
<td></td>
</tr>
<tr>
<td>1971</td>
<td>Jhora Area Land Act: transferred ownership in three Eastern Tarai Districts to the settlers &amp; cultivators of forest land lawfully cleared by land owners but absent. Owners compensated with 5 x land tax rates and cultivators required to pay government. Effective – but to benefit of owners as tenants could not pay government</td>
<td></td>
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<tr>
<td>1972</td>
<td>Guthi Sansthan (Trust Corporation) Act, amended in 1976, 1984, 1986 and 1992. Established to manage all state trust lands. Responsibility to conduct all religious and philanthropic activities transferred to Guthi Sansthan. Unsatisfactory Created a situation wherein land administration was fragmented between 2 authorities, Guthi Sansthan has been unable to take full stock of land under Guthi of various types. As a result, misappropriation and corruption</td>
<td></td>
</tr>
<tr>
<td>1972</td>
<td>Scheme started to help tenants buy out landlord but without fixed prices landlords continued to sell to other landlords Ineffective</td>
<td></td>
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<tr>
<td>Year</td>
<td>Event</td>
<td>Details</td>
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<tr>
<td>1973</td>
<td>Under new Land Rules under Lands Act 1964 the order of beneficiaries changed to enable institutions to gain share of redistributed land</td>
<td>This deprived genuinely deserving land poor</td>
</tr>
<tr>
<td>1973</td>
<td>National Parks and Wildlife Conservation Act</td>
<td>Provides inter alia for exclusionary control of designated parks by State, particularly dispossession and/or affecting indigenous groups in the 19% of the country under Parks</td>
</tr>
<tr>
<td>1973</td>
<td>Nationalization of Grazing Lands Act</td>
<td>Irrespective if registered or not, all pastures transferred to Government, except where they are less than the ceiling for that area (hills, mountains, Tara). Compensation to be paid. Management to be handed over to VDCs and which may levy fees for grazing use</td>
</tr>
<tr>
<td>1974</td>
<td>Implementation of Grazing Lands Act</td>
<td>Implemented, dispossessing numbers of indigenous groups together with infringement on rights to use these areas</td>
</tr>
<tr>
<td>1974</td>
<td>Nationalization of Grazing Lands Act</td>
<td>Implemented</td>
</tr>
<tr>
<td>1976</td>
<td>Amendment to Guthi Act</td>
<td>(i) limiting powers of Guthi Corporation in management of Guthi lands, including transfer of administration of Chhut Guthi (Guthi where rights held by individuals) to District Land Revenue Office</td>
</tr>
<tr>
<td>1977</td>
<td>Amendment to Guthi Act</td>
<td>(ii) Also abolished Jimidari system on Raj Guthi lands in the Tarai and imposed limitation of extraction of rent to 50% of principal crop. The tenancy right able to be sold to others. Ceilings to apply to Guthi land</td>
</tr>
<tr>
<td>1977</td>
<td>A new attempt at organized settlement of the Tarai, in the Dhanewa Project which settled 4,026 migrant families on 4,045 ha by 1988. Did not include significant numbers of true landless</td>
<td>Implemented – in favour of better-off</td>
</tr>
<tr>
<td>1977</td>
<td>Land Acquisition Act</td>
<td>Upheld Raikar (private property) right to claim compensation in event of compulsory acquisition by state for public purposes and special purposes, opening way for redistribution purchases. Tenant to receive 25% of compensation to be paid to owner</td>
</tr>
<tr>
<td>1979</td>
<td>Land Revenue Act; provided for District Land Revenue Offices replacing Land Tax and Land Administration Offices, responsible for complete registration records, and receives taxes and fees on transactions. Lays down rate for land taxes in accordance with strata. Law also prohibits cultivation of government or public land and in effect declares all unregistered land to be public land.</td>
<td>Empowered district level significantly, but vulnerable to corruption</td>
</tr>
<tr>
<td>1979</td>
<td>Revitalization of the landless peoples’ movement triggered by student protests. Minister of Lands pledges to give titles to all who till in the Tarai and establishes Sukumbasi Resettlement Selection Committee. Settled some 400 landless out of 32,000 families in three western Tarai districts.</td>
<td>More rhetoric than delivery, most of the landless never gaining title</td>
</tr>
<tr>
<td>1986</td>
<td>Amendment to Guthi Corporation Act</td>
<td>Allowed conversion of Guthi land into Raikar (private) by paying specified amount to Guthi Sansthan</td>
</tr>
</tbody>
</table>

Biased to better-off |

Problematic as tenants have to pay value of land whereas tenants on non-Guthi land acquire land virtually free |
### PHASE III 1990 – 2005 A NEW ATTEMPT AT LAND TO THE TILLER REFORM

<table>
<thead>
<tr>
<th>Year</th>
<th>Act</th>
<th>Description</th>
<th>Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>Cooperatives Act</td>
<td>Did not provide specifically for farmer cooperatives, mainly geared to marketing cooperatives</td>
<td>Effective for marketing</td>
</tr>
<tr>
<td>1992</td>
<td>Water Resources Act</td>
<td>Provided ownership rights of water to the State but grants use rights to individuals and groups and enables the latter to form legal entities.</td>
<td>Drinking water and household use put on top of priority on water use, followed by irrigation.</td>
</tr>
<tr>
<td>1992</td>
<td>Supreme Court ruling of 1992</td>
<td>Rules that bonded labour is illegal following case submitted by a civil society organization (INSEC) requested Supreme Court to abolish bonded labour.</td>
<td>Delayed application; only in 2000 did the government announce through executive order abolition of the Kamaiya system</td>
</tr>
<tr>
<td>1993</td>
<td>The Forest Act</td>
<td>Provides for management of national forests as Community Forests, Government Managed Forests, Leasehold Forests and Religious Forests, without surrendering ownership. Only Private Forests are not State-owned and the law provides for these to be compulsorily acquired. Critical Forest Regulations 1995, as relating to community forests.</td>
<td>Proscribed opportunity for communities to re-secure forests as collective property and created a user-centric regime which does not necessarily elide with community composition</td>
</tr>
</tbody>
</table>
| 1994-95 | High Level Land Reform Commission (Badal) | Key recommendations -  
- All Guthi land should be converted into raikar and subject to taxes  
- All tenants should be identified and registered, and given 50% of the land cultivated by them  
- Significant lowering of ceilings Tarai 3 ha, hills 2 ha, mountain 4 ha, Kathmandu Valley 1 ha, urban areas: Kathmandu Valley 0.5 ha, all other urban areas 1 ha  
- Compensation for land owners whose land is acquired above the ceilings; One time cash for up to 1 ha, development bonds for more than 1 ha  
- Establishment of a Land Bank to do financial operations on land in implementing the recommendations  
- Establishment of floors to limit fragmentation  
- Land use regulation measures  
- Reiterated the priority of the Agriculture Perspective Plan activities to support farmers in these areas: irrigation, subsidised fertilizer, technology developments, roads, rural electrification, livestock marketing, agribusiness development, introduction of high value crops, forest product development, credit provision  
- That minimum wages be fixed  
- Abolition of all forms of bonded labour including kamaiya  
- A standing High Level Land Reform and Agricultural Development Commission be established  
- Community and district level implementation bodies to be established | Partial implementation only  
Guthi conversion, Land Bank Commission and other institutional developments not implemented  
Implemented in law:  
50% land entitlement implemented for registered tenants only.  
Minimum agricultural wages fixed (2003). |
### Chapter three: Land reform in Nepal

<table>
<thead>
<tr>
<th>Year</th>
<th>Event Description</th>
<th>Implementation Details</th>
</tr>
</thead>
</table>
| 1997 | Amendment to Lands Act 1964  
Decision to partition tenanted land and to abolish traditional tenancy altogether -  
(i) Transfer of 50% owners’ land to Registered Tenants only  
(ii) Abolition of traditional tenancy in favour of contract tenancy (formal agreements) with no limitation on conditions | Implemented partially  
Many registered tenants still without their share in 2008.  
Generally further de-secured tenancy occupancy, with landlords refusing tenants to stay longer than one year. Many evictions. Sent tenancy underground with little change in conditions. |
| 1999 | Contracts Act: Leases are not subject to ceiling | Barely applied: land leasing under contract rarely practised |
| 1999 | Local Self-Governance Act  
(i) Provided for VDC and municipalities to levy house and land tax and forward 25% to District Development Committee  
(ii) Responsible for hearing land disputes including relating to reform objectives | Implemented  
Has provided VDCs with register information and begin land administration. Also empowered them in principle but not financially as taxes so low  
Not clear that VDCs taking land dispute resolution powers |
| 1999 | Under challenge, a Supreme Court ruling upheld the right of the State to direct subdivision of land owner’s land to registered tenant as constitutionally sound | Helped the case for redistribution |
| 2000 | Policy statement issued by Cabinet on the need to provide land for landless | Focused on the bonded labour issue again |
| 2001 | Amendment to Lands Act 1964  
(i) Ceilings reduced but not as low as levels recommended by Badal Commission in 1995  
(ii) 50% land or equivalent value to the registered tenants, regulated rent to not exceed 50% of the main crop until dual ownership cases settled | Lowered ceilings not applied up until present |
| 2002 | Kamaiya Labour (Prohibition) Act  
Abolished all bonded labour arrangements, freed all Kamaiya, cancelled all their debts outstanding and ordered return of all property of Kamaiya taken as collateral for debts, and required each District affected to establish a Monitoring Committee | Effective for those identified and registered as landless, but did not assist Kamaiya with house-plots but no land |
| 2003 | Minimum Agricultural Wage established in law for the first time in Nepal; set at Rs. 60 | No enforcement mechanisms but in practice farm wages now e.g. Rs. 110 for women and Rs. 120 for men in mid-west Tarai |
| 2004 | Finance Act: waived 20% registration fees when land registered in name of women, Dalit, Janjati and members of martyr families | Effective for women |

**PHASE IV 2006-2008: RETHINKING THE WAY FORWARD**

Implementing the Comprehensive Peace Accord signed by 25 political parties recognises the importance of land reform towards peace implying sustained commitment to redistribution  
Ensured that land reform not off the agenda in New Nepal
<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>Act to Amend Some Nepal Laws to Maintain Gender Equality. Amended Civil Code and 17 other laws including Lands Act 1964 mainly on terminology. Provides for equitable gender inheritance of land</td>
<td>Ineffective as lasting only till a woman is 35 years of age and/or unmarried</td>
</tr>
<tr>
<td>2007</td>
<td>Interim Constitution pledges compensation for land losses due to enforcement of a scientific land reform 'by doing away with the feudal land ownership', special socio-economic security programmes including positive discrimination for landless squatters, bonded labour &amp; tillers, women and disadvantaged groups. Notably also ruled that no case could be brought as to whether these actions implemented or not (Art. 36).</td>
<td>Entrenches rights including the right to demand reforms</td>
</tr>
<tr>
<td>2007</td>
<td>Three Year Interim Plan defines scientific land reform, lists 20 broad targets (e.g. including irrigation) including - establishment of a High Level Land Commission - 50% discount on transaction fees when land purchased by woman or member of a deprived class - land to 200,000 landless - rehabilitation support for 13,244 freed Khamaiyas - plan to relocate Guthi land administration to districts - fully digitize 3.8 million parcels, and - review of land ceilings</td>
<td>Noticeably not all provided for in 3-Party commitment in 2008 but some in Budget 2008/09</td>
</tr>
<tr>
<td>2008</td>
<td>Common Minimum Programme (signed by three parties of coalition in August 2008) commits to only – Loss of property due to conflict will be compensated – Increase access to land through scientific land reforms and use policy – Develop cooperatives – Special programmes for labourers, freed Kamaiyas and landless squatters</td>
<td>Limits political commitment</td>
</tr>
<tr>
<td>2008</td>
<td>Government announcement restating illegality to keep a bonded ploughman (Hailya), cancellation of all debts</td>
<td>Followed through with finance in Budget 2008/09 including for resettlement if evicted</td>
</tr>
<tr>
<td>2008</td>
<td>Budget 2008/09, commits to funding – (i) Establishing cooperatives for small farmers in every village (ii) Waiving all debts of small farmers living below the poverty line and debts on Bank loans to small farmers up to Rs. 30,000 Imposing a tax to discourage keeping arable land unploughed (iii) Establishing a High Level Scientific Land Reform Commission ‘for the abolition of feudal land ownership and production relations’ (iv) Computerising land records with issue of single land ownership certificates (including all lands owned by that one person) in 25 districts in 2008/09 (v) Compilation of a nationwide record of public and government land to protect from increased encroachment</td>
<td>Articulates what is meant by scientific land reform as to be implemented immediately with noticeable absence of ceiling-related provisions or redistribution. Potentially dangerous effect of tax payment confirming ownership of fraudulently or unfairly registered properties but this quickly modified to remove that protection Compilation of public and government land almost complete even before Budget Speech Computerisation well underway also</td>
</tr>
</tbody>
</table>
V. A REVIEW OF 55 YEARS OF LAND REFORM

Feudal land relations gave way to modern capitalist property relations but with the inequities intact

Privatisation of the granted and acquired rights to land has been a main output of the reforms. This would occur without modernising landlord-tenant relations, let alone delivering equity in land ownership (see below). Nonetheless, there may be no doubt that key structures upon which feudalism operated were largely dismantled from 1951.

A first attack was upon the Jagirdars. This did not even require a special enactment. Most of those holding Jagir lands were members of the Rana family and as they resigned their positions in the government and army, their land assignments automatically reverted to government. Additionally, in 1951-1953 it was established that all government employees could only be paid in cash at specified salary scales. Tenants on Jagir land were to pay taxes at official rates.

It would be wrong to think that resigning Jagirdars lost all the lands they had acquired. Many were able to hold on to quite large tracts in the Tarai, including lands they had ‘purchased’ in lieu of debts from small owners or expanded from the original parcels which had been given to them as part of their incentives.

Changes in the meaning of Raikar also occurred. As shown above the idea of Raikar as royal/state land on which occupants paid tax had already evolved into private rights of unspecified term, the capacity to transfer, bequeath, sell and mortgage the lands, to place tenants on the land and to take rent from them. The 1957 Land Law gave this transition legal force. It removed the fiction that Raikar landholders were tenants of State by defining the registered Raikar

(vi) Freedom and rehabilitation of Haliya (ploughmen) and rehabilitation of freed bonded labourers (Mukta Kamaiya) including ‘land exchange and adjustment programmes’ Providing housing arrangements for the real landless/homeless along the banks of the rivers of Kathmandu Valley

(vii) Establishing a new voluntary submission tax scheme affecting property and income at fixed rate of 10% after payment of which ‘the property shall be deemed legal and no source of such property shall be investigated’ and ‘property of those failing to comply will be subject to confiscation’
landholder as landowner. Thus the Mohi (or statutory tenant on state land) was upgraded to an owner and equivalent to a Birta owner.

With the abolition of Birta two years later (1959) the nature of all ownership as a single system of private tenure was confirmed. Two years after that, the Land Acquisition Act 1961 would finalise the issue; this required that government thereafter compensate Raikar owners in the event of their land being appropriated for public purposes.

The Land (Measurement and Inspection) Act 1963 reinforced the process by drawing a clear distinction between public and private lands. Raikar, born two centuries earlier as royal/state/government land thus completed its transformation into private property by 1963. However the state itself acquired large tracts of especially Birta property, and gained substantially from the confirmation of public land as government land, administered by central or local governments.

Registration of Birta land as Raikar was not always to the favour of registered Birta grantees or their descendants but to those to whom they had passed on or sold the land, sometimes sitting tenants who in turn employed tillers. This trend was reinforced in 1992; after that date no outstanding Birta land could be registered to an original Birta owner.

2 Customary rights were finally abolished in law

Kipat was held to be an outdated system by government in the 1950s and to be subjected to survey and registration as private property (Raikar). Warning that this would occur was given in 1951 by Royal Order which removed the labour obligations imposed upon Kipat lands, removing the mechanism which marked Kipat as distinctly tenured.

Formal abolition of Kipat occurred in the 1960s after a brief remission in 1961 when the Limbu in particular were for a short time assured that traditional land rights would be upheld, as a means to buy their reluctant support for the new Panchayat system. The 1963 Lands Act weakened Kipat further. Finally in 1968 it was confirmed that Kipat lands could be alienated and taxed in exactly the same way as Raikar thus removing the last distinction between the two regimes.

In the presumed name of modernisation, ethnic community members who had not secured their tenure in modern Raikar entitlements simply lost their land. All members lost their collective properties (see below) as well as the right
to determine their own land relations. This abuse of land rights would come to haunt later administrations, and drives demands today for a federal state founded in part upon the original territories of key indigenous nationalities.

3 Key lands were nationalised

Not all Birta land or Kipat was converted into private property. At its abolition in 1957, forested and fallow Birta was retained by the state, some of this more correctly customary property. The Private Forest Nationalization Act of the same year facilitated this (1957). Kipat forests falling outside Birta reverted to government through above-mentioned privatisation of customary tenures. Indigenous communities with significant pastoral resources in the hills and mountains also found their communal lands removed from them in 1974, although in that case the management of their lands was to be handed over to the VDC. These actions had the prompt and predictable effect of undermining local forest and pasture regulation regimes and delivering forests and pastures into classical open access.

At most indigenous communities have been thereafter able to access but not own forests or pastures. And if there were doubts, then the 1963 Land (Measurement and Inspection) Act made it clear that forests were not even public land, but Government Land (Box 12).

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**BOX 12**

**THE LEGAL DIFFERENCE BETWEEN GOVERNMENT AND PUBLIC LAND**

As defined by the Land (Measurement and Inspection) Act 2019 (1963)

“Government land” should be understood as land occupied by roads, pathways, railway and government buildings and office premises and this term also denotes land under the control of the Government of Nepal such as forests; bushes; rivers and water streams; areas created by river siltation; lakes; ponds and their banks; canals; water channels; alani, barren or other land; cliffs; rocky slopes; trails; river/stream banks; and lands designated from time to time by the Government of Nepal as government land by publishing notification in the Nepal Gazette.

“Public land” should be understood as areas that have been used publicly from time immemorial besides being used by individuals such as pathways, water sources (ditches, fountains), banks of water bodies, wells, ponds and their banks, passages for livestock, grazing lands, cremation grounds, cemeteries, places for public rest (buildings, inns), temples, places for religious worship, monuments, courtyards, platforms, drains, temples, resting places (under trees), places where markets and festivals are held, places for public entertainment and sports, and lands designated from time to time by the Government of Nepal as public land from by publishing notification in the Nepal Gazette.
The 1993 Forest Act entrenched this. Forests were formally declared to be state property and only their management and use could be devolved to citizens. This was necessary to counteract the plummet into degradation following nationalisation of the resource. The plan emerged through the 1980s under donor supported programmes and was formalised in 1995 as the Community Forest User Group (FUG) programme. The programme is a success, delivering 20% of the total forest resource (absorbing 1.1 million ha) to the management of 14,305 FUG, comprising 1.644 million households (or 34% of rural households) (Department of Forest 2008).

Nonetheless, the construct of Forest User Groups does not sit easily with the socio-spatial construction of local community, or with community dominion and rights as defined by indigenous groups. Even though many members of local nationalities are included in these Groups, they complain of lack of voice and the suppression of traditional forest rights, and uses such as shifting cultivation. There are also complaints that while poorer users are catered for, elites have secured control of these programmes. Indigenous groups are also troubled by the lack of fit between areas declared as Community Forests and the usually much large zones which belonged to their local communities traditionally.

The creation of National Parks and Reserves (1973) has been a particular blow to indigenous groups who remain dispossessed and largely un-resettled.

4 Guthi land was never successfully reformed

The abuses inherent in the complex class of religious/philanthropic lands would be addressed slowly and with little result (Box 13). *Guthi* remains today a complex land class comprising both genuine assets needed and used by religious institutions and lands which are located as *Guthi* for tax avoidance, ceiling avoidance purposes and evasions of even the minimal wage and conditions protection afforded tenants on private lands.

5 Control over landholding passed from landlords to the state, not to the people

One of the most effective elements of the reform was to bring all powers and systems relating to the administration and taxation of lands into the hands of the Panchayat government. It was not just *Jagirdars* who lost controlling powers (1951-53) but every *Jimidar* and *Tilukdar* overlord in every village, and virtually all of whom were by 1951 among the largest owners in the community.

Legislation of the 1950s affecting *Ukhaada* and *Jagir* helped and was finally delivered by the abolition of intermediaries in the 1963 law. *Jimidar* powers were
handed over to Government, de-concentrated to District Land Administration and District Tax Offices. These were combined into single Land Revenue Offices in 1978. Although these offices carry out their responsibilities autonomously, they are offices of central government, reporting upwards to the Ministry rather than accountable to locally elected authorities.
The effect of the removal of controlling powers over land administration from the hands of overlords should not be under-estimated; it was the single most important act in removing one of the three legs upon which feudal land power rested; power, property and peasant compliance. Neither should it be over-estimated; peasants still did not gain decision-making power over their lands. Nor is it clear that the alliance between landlords and bureaucrats has yet been broken. Windows of change have been suggested more recently through the passage of the Local Self-Governance Act in 1999 (2055 Nepal Year). The beginnings of democratization of land administration may be seen in the recent devolution of at least the power to collect land tax passed down to VDCs. Land tax is so miniscule that its collection was not worth the time of Districts to pursue. VDCs in turn, or rather their Secretaries, also likely do not cover the time-costs involved in collection.

6 Tenancy reform has failed

Reform in landlord-tenant relations has been a consistent theme throughout the land reform process. Initially, the objective was to increase tenant security, not abolish the practice. The findings of the Tarai Commissions in 1952-53 laid down basic needs: (i) landlords should not be able to evict tenants without due cause; (ii) tenancy arrangements should be written down in formal contracts; (iii) tenants should receive receipts for rent paid and (iv) rent should be limited to 50% of the crop share.

These became law in 1957 but have been weakly adopted by landlords and almost never enforced. This is despite their reinforcement in the 1963 Lands Act and reiteration as objectives in most Five Year Plans since.

It is through the efforts of civil society actors that some improvement in tenant conditions has been realised. Achievement is still limited. An estimated one million farm tenants are not even registered over and above those who are (541,802). Although no official data exists, the proportion of peasants who have written agreements with landlords or receive receipts on payment of their rent/crop-share is believed to be low. It is widely reported that not all landlords restrict their claim on tenant labour to the value of 50% of the crop share; on the contrary, poorer tenants complain of being required to provide extra labour. Serfs, or bonded labourers are most affected, and who could number as many as half a million families as estimated in Chapter Two.40

40 CSRC, working in 47 districts, estimates that 300,000 landless Dalit families alone work as Haliya or Haruwas in the hills of Western Nepal and central and eastern Tarai, quite aside from the many Dalit and non-Dalit working in bonded relationships in western Tarai districts (CSRC 2007a).
Nor are tenants more secure in their occupancy than they were before the reforms. Many are less secure. The threat of eviction has hung over tenant sharecroppers for five decades and frequently becomes reality. Tenants in turn abscond readily should other work opportunities arise. The slow rise in agricultural production, continuing up to the present at well below expected levels, may well derive from de-incentivised tenancy relations rather than land ownership distribution.

Occupancy and service has in most cases been commuted to insecure annual agreements and in which neither landlord nor tenant has trust, the landlord knowing the tenant may abscond and the tenant knowing he may never get a receipt for his rent or be able to cultivate the plots the following year. Many tenants in the Tarai are Indians, landlords knowing that as non-citizens they cannot claim tenancy rights. This recently changed through political demand for citizenship certificates to favoured groups. Much land meanwhile is said to lie unfarmed as landlords avoid hiring tenants altogether. This is particularly so in the hills where shortage of labour and land conjoin with out-migration to render agricultural production stagnant.

Two immediate causes of failure to positively reform tenancy need emphasis –

First, malaise in enforcement on the part of government authorities saw no concerted action since the earliest plans in the 1950s to investigate or enforce the issue of written agreements or receipts by landlords;

Second, by failing to move successfully from a strategy focused on improving tenancy conditions to outright land-sharing, insult was added to injury for tenants. This was implemented in such a way (and first aired in 1961) that landlords had plenty of time to conceal not just the size of their holdings but the status of their farmers. A few loyal tenants are believed to have become beneficiaries, landlords placing parcels in their names, but with neither the real benefits of ownership nor the right to claim tenancy rights. Mostly tenancy was simply disturbed in a range of actions from eviction to denial of terms. For those dependent upon the landlord for their occupation (house), this security was threatened with the absolute demise of landlord responsibility.

In a word what occurred was liberation of landlords from traditional responsibilities as patrons without liberation of tenants or workers. These logical pre-conditions to avoid this result were not applied, viz. –

i. comprehensive listing of all tenants well ahead of tenancy reforms; this was planned as early as 1956 but was not implemented until well in the 1990s, and by then, with difficulties as many tenants could not secure recognition that they had been tenants;
ii. buy-in to the process by the landlords themselves, through political allegiance or persuasion;

iii. direct involvement of local tenants themselves to ensure inclusion in registration;

iv. transparency in the process, affecting how government officials and courts dealt with issues arising in conditions where their class alliances favoured landlords; and

v. most of all, simply lack of enforcement of the law.

Their absence resulted at best from poor planning and funding of delivery mechanisms along with a too-casual assumption that the law implements itself (i.e. is voluntarily adhered to). At worst, there was no real intention to make it work, or to interfere with the rooted privileges of the landed class, many of whom were already off the farm and working in government of other offices. The landlord-state alliance remained in place through the major reform period (1964-1984). The restoration of democracy in 1990 would do little to alter this, as shown below.

7 Tenancy reform took too much time to move into land partitioning

Following the 1963 reform law, the term dual ownership of land began to take hold in reference to landlords and tenants. This did not literally mean that owners and tenants were to equally share the land. The 1963 law was only really concerned with regulating the rent payable by tenants. However, it did provide that should the owner wish to resume using the farm as a homestead plot he could acquire exclusive access to the land by allocating one third to the tenant. This article was widely interpreted to mean the provision of one-third of the estate to the tenant.

The effects were predictable. During the 1960s and 1970s this provided the greatest incentive to landlords to get rid of tenants or at the very least change the terms through which they farmed to be non-tenants.

Even then the reforms were more favourable to landlords than tenants. The illusory benefit to tenants within the terms of the law should not be ignored. The tenant for example could himself build on the land and get compensated if evicted, but there was no evidence that tenants dared start on this course. There was a large loophole through which landlords could resume the land and at the same time evict the tenant. This could be applied in (the many) cases where the tenant was in possession of an area equal to or less than the area permitted to be
resumed. Therefore even the limiting provisions of the nearly century-old 1906 Land Law were done away with.

Not surprisingly tenants were largely compliant. There was no practical opportunity to acquire the land. Prices were kept high and surpluses were traded within the already landed gentry.

8 Revitalising political commitment to land to the tiller — but not delivering

The Badal Commission of 1994/95 rightly perceived that conditions for tenants had not only not improved since 1957 and 1963 but the poorest and most vulnerable (landless) tenants were also still openly enduring serf-like conditions. The only exception was where tenants happened to have civil activists working on their behalf and/or where District Revenue Offices and Courts were sympathetic to their claims, should those claims ever reach those offices.

The abolition of tenancy through handing over a share of the landlord’s property to tenants is a founding principle of land to the tiller reformism. Box 14 revisits this.

**BOX 14**

**THE IMPLICATIONS OF LAND TO THE TILLER REFORM TENANTS**

A land to the tiller thesis argues that landlordism is always absentee landlordism in the sense that the owner does not farm or cannot farm because he is otherwise occupied and/or that he has too much land to farm himself and must hire labour.

The thesis also argues that for as long as landlords and thence tenancy exists, exploitation flourishes as the landlord always holds the upper hand — the ultimate means of production, the land — and has those who till the land at his mercy - especially if they are landless themselves.

Therefore the answer lies in turning peasant farming into small owners, each family farming its own land and only its own land. This is argued as also good for production; first, small farms produce more per hectare, they absorb more labour per hectare in crucial transitions of food security. Second, with his own land in hand the farmer has the ultimate incentive to modernise his operations and make the most of his capital (the land) by adopting new techniques and new, more lucrative land uses. Third, his profit goes to buying goods which help drive off-farm commerce and productive enterprise (light industrialisation, in the form of foods, clothes, shoes, bicycles etc).

At the same time a concession is made to a belief that at times large farms and large scale production is necessary. The route for this is cooperative production at the small farm level and creation of large collective farms at the large farm level.
A concession is also usually made to the likelihood that a class of agricultural wage worker will arise and will require wage rate protection. Farm workers will emerge in large collective farms (even if owned by the farmers themselves) in the division between management and farm and farm-related product preparation, transportation and marketing. There may also be acceptable reasons for a smallholder to at times not till the farm himself.

Therefore a revolutionary land to the tiller reform usually has four thrusts: (i) abolition of tenancy (ii) equitable distribution of all tenanted land to tillers; (iii) agricultural wage reform and (iii) provision for collective ownership and production. The more revolutionary will dispose of land ownership altogether, vesting the resource in the nation/state and allowing farmers usufruct rights only, and with conditions. This is well illustrated in mid-reform periods in China and Vietnam, since reconstructed as privatised equitable holdings.

In rhetoric the post-democracy reform was a shift towards revolutionary land reform, but with limitations. Promotion of collective production, let alone ownership, was absent in the Badal Commission recommendations. Nor were legal provisions introduced towards this although product-specific marketing associations were encouraged (1991) and flourished.41

The central provision of the 1990s reforms was to abolish tenancy: More equitable distribution of ownership was also an objective, but structured to only affect those with above ceiling holdings and those with the tiniest holdings (sub-marginal). Farmers in the marginal, small and middle sized ranges would not be affected – unless they had tenants.

The Badal Commission proposals on tenancy were that –

a. for a registered tenant, the right to own his share would be immediate; where both parties were farmers the land would be divided equally and following survey, the ownership right awarded to the tenant over his half.

b. Where one party was not farming then the entire land would be handed over to the tenant, the landlord receive the value of his share; the registration fee for the tenant would be waived. Either tenant or landowner could sell his share to a third party if the tenant could not buy the latter’s land; in such cases fees would not be waived at registration.

c. Ceilings on permitted arable holdings would be lowered.

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41 Producer associations for the marketing of products has however flourished since the 1990s, such as in 
Associations for sugarcane, poultry, tea, coffee, fruit, vegetables, fish, cereals, herbs, honey, turmeric and 
ginger, potatoes, flowers, milk, cardamom, and mushrooms.
d. Floors would be imposed; subdivision below a minimum farm size would not be permitted. Both ceiling and floors would come into play in the event of transfer of land to tenants.

e. Any farmer who had farmed the land continuously for three years would be given the rights of tenancy, including the right to receive half the land farmed.

f. Tenancy rights would be inheritable.

g. Not all tenants would be due a share of ownership of the land they farmed. To exclude those who already had land of their own, tenancy rights would be given only to the most marginal of farmers - those with farms equal or smaller that 0.067 ha in the Tarai (2 kattha), 0.05 ha in the Hills (1.5 kattha) or 0.01 ha in the Mountains or urban areas (0.3 kattha).

h. Once ownership rights were acquired by tenants they would be free to lease out the land but without those lessees in turn acquiring owner to tenant rights.

i. Leases would be different from tenancy, in that they would be regulated by contract law as signed annual agreements, fixing the term, conditions and shares.

9 Some small progress towards redistribution to tenants has been made

The above were entered into 1963 Lands Act by amendment in 1996/97. Once again, supported delivery was slow, enforcement and coverage limited.

Some progress has been made in regard to those who managed to secure registration as tenants ahead of the closure of the opportunity to register in 2002/03. Delivery is incomplete. The reasons given are slowness of survey and slow resolution of disputes arising as a consequence of registration. As noted earlier there is a backlog of 103,000 unresolved court cases relating to the reform measures. Added to this are a multitude of complaints lodged with District Land Revenue Offices. To be fair, the level of District Land Reform and Revenue Office time absorption with such matters is high.

Dang District for example had 3,654 cases on its books by the end of fiscal year 2007/08, of which 35% were pending requests related to dual ownership (856 from tenants, 34 from landlords, 408 submitted jointly). There were 52 other requests/disputes related to tenants, 177 cases related to transfer of tenancy rights, 35 claims against eviction, 35 cases related to claims that the tenant had failed to pay rent, 12 voluntary relinquishments of tenancy rights, 89 cases
where agreement between tenants and landlords has been reached, 10 cases forwarded to the court, and a surprising 1,819 cases claiming that the tenants has absconded from farming. What must also be noted is that the District records that 14,138 bigha have been ‘freed from tenancy’ and 6,860 tenants are said to have received 6,221 bigha, or 44% of the land so freed. It is not known how far these tenants are now actually the registered owners.

The commitment to see through the partition of tenanted lands has been sustained. This gained from a Supreme Court ruling in 1999 following challenge as to the constitutionality of partitioning tenanted land, on the grounds that full compensation is due for compulsory acquisition of land. The Court ruled that the Lands Act was clear in its principle that rights to land belong to those who till, that the spirit of the Constitution was towards social justice and fair distribution of resources, and that no compulsory acquisition was in fact taking place; the state was not acquiring the land but merely facilitating its division.

By its own records, the Ministry of Land Reform and Management claims to have settled around 80% of dual tenancy cases among the 541,802 registered tenants, with award of 180,600 ha (or an average of 0.3 ha) committed to those tenants. Again, it is not known how much of this land has actually been registered in the names of those tenants, signalling completion. By any account, progress has been slow in the 12 years since the law directing partition of tenanted land was enacted (1996/97).

Reasons for slow progress are well-known –

i. the need for tenants to possess citizenship or ID cards to obtain tenancy certificates;
ii. their need to hold rent receipts as evidence of tenancy;
iii. practically if not legally required, confirmation from landlords that they are tenants; and
iv. the fact that so many tenants now operate (mainly coercively) as seasonal or annual workers and sharecroppers.

Larger numbers of tenants continue to be unregistered and unprotected in their occupancy or conditions. CSRC was one of the most active advocates of securing tenancy certificates and in 2007 reported it had facilitated these for 13,484 tenant families affecting 3,034 ha (CSRC 2007a), a modest but realistic assessment of progress; this represents less than 2% of its own lowest estimate of 690,000 unregistered tenant families in its own sight-lines. However registered

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42 Other records suggest that it only considers 288,261 eligible for land partition (CSRC 2007a).
tenants now gain only in conditions, no longer being eligible for partitioned land.

In law landlords and tenants remain on unequal footing. Curiously, a tenant is bound to a lower ceiling than a landlord. An owner may cultivate 625% more than a tenant (4 bighas cf. 25 bighas). In addition, the landowner’s surplus acreage is subject to payment of compensation but when a tenant loses his surplus land above his lower ceiling he does not receive compensation. As recorded above, tenants on Guthi land are also in a much weaker situation than tenants on Raikar (private property), despite the terms of amendments to the Guthi Trust Act.

10 Redistribution of land within the private sector basically failed

The sister foundation of classical land reform is to redistribute farm ownership more fairly among all farmers. Reform in Nepal never had intentions to nationalise all farmland and then redistribute the land. Redistribution has remained firmly within the private land sector, setting ceilings and redistributing only the surplus.

To recap, ceilings were set under the Lands Act 1963 and lowered by its most recent amendment in 2001. Table 28 lays out the ceilings, along with the more radical recommendations of the intervening Badal Commission (not adopted).

<table>
<thead>
<tr>
<th>Table 28</th>
<th>Ceilings as Established By Law with Commission Recommendations in 1995</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>Tarai</td>
</tr>
<tr>
<td>----------</td>
<td>-------</td>
</tr>
<tr>
<td>1964</td>
<td></td>
</tr>
<tr>
<td>Farmland</td>
<td>16.7 ha (25 bigha)</td>
</tr>
<tr>
<td>Homestead</td>
<td>2.0 ha (3 bigha)</td>
</tr>
<tr>
<td>Total</td>
<td>18.7 (28 bigha)</td>
</tr>
<tr>
<td>2001</td>
<td></td>
</tr>
<tr>
<td>Farmland</td>
<td>6.7 ha (10 bigha)</td>
</tr>
<tr>
<td>Homestead</td>
<td>0.67 ha (1 bigha)</td>
</tr>
<tr>
<td>Total</td>
<td>7.37 ha (11 bigha)</td>
</tr>
<tr>
<td>1995 Commission Recommendations Rural Lands</td>
<td>3 ha (4.5 bigha)</td>
</tr>
<tr>
<td>1995 Commission Recommendations Urban Lands</td>
<td>0.5 ha (10 ropani) Cities</td>
</tr>
</tbody>
</table>
The ceilings have remained high limiting the scope of redistribution

As concluded in Chapter Two nearly half of all farm owners in Nepal hold less than 0.5 ha of land (47.7%) by Central Bureau of Statistics reckoning (NASC 2001/02). This is the absolute minimum for subsistence and any farm of this size or smaller correctly termed ‘marginal farming’.

The picture is worse if farms big enough to provide a little surplus are considered (1 ha or 30 kattha). Seventy-five percent of farms are below this level, even excluding an estimated 10% of rural families who own no homestead at all.

In light of this, the setting of ceilings at 7.37 ha in the Tarai and 3.75 ha in the hills and mountains in 2001 begs the question as to how serious the Nepal Government has ever been to amend distribution in favour of the majority.

Ceilings set so high cannot deliver sufficient land to redistribute. Even if all the large holdings were in the land-rich Tarai (where most disparity in holding sizes is seen) then the ceiling could affect no more than 20,000 households.

According to NASC 2001/02 only 25,358 holdings were larger than 5 ha, and it may be assumed that at least one quarter were less than 7.3 ha. Assuming each household with more than 7.3 ha delivered one ha on average, and redistribution to benefit poor households at that rate of 0.5 ha each, then only 40,000 families could benefit, or 80,000 households if the allocation was 0.25 ha (7.5 kattha). However we know around 20% of rural households have absolutely no arable land of their own – or around a million households. Ceilings at this level could never deliver the surplus needed.

Lack of real will further dogged implementation

Even at their generous levels, imposition of ceilings was fraught with half-heartedness and successful evasion.

Certain categories of land were exempt including royal lands and initially Guthi lands, both of which contained large holdings. The prior announcement and staging of imposition over three years (1964-1966) gave ample time to landlords to remove their surplus by sale or subdivision among family members and friends.

The six-year lag time between the Badal High Commission for Land Reform in 1995 and uptake of its recommendations to lower the ceilings allowed further manoeuvring, even though the new levels put into law were half what the
Commission recommended. Government was aware of the manoeuvring and investigative commissions were sent to various sites but no punitive action followed findings.

In the event, the amount actually obtained from ceilings has been paltry, a mere 29,124 ha, or 0.47% of the total holding area, or 0.85% of actually cultivated land. Only about half of even this area was actually distributed, although to who is unclear. The rest remains in the custody of the original owners, government unable to manage its distribution for unspecified reasons. More recently 1,602 ha of public land have been granted to 12,019 bonded labourers (Kamaiya).

Should the promised 180,600 ha of land through the partition of tenanted land to 541,802 tenants be carried through as outlined above, the total area of redistributed land could rise to 211,326 ha. This is 6.2% of actually cultivated land, or 3.4% of cultivable holdings. Total beneficiaries will be 583,821, or 11.9% of all rural households. The average gain to each will be 0.36 ha (10.8 kattha).

While the potential area of tenanted land to be distributed may seem substantial to officialdom, in real terms it remains low. Perhaps the best way to illustrate this is to return to Chapter One. Of the 20 country cases presented only three redistributed less than 10% of the agricultural land area or redistributed to the benefit of fewer than 11.9% of rural households. Admittedly those country cases are not properly sampled, chosen simply for the availability of data, and exclude some prominent failures like Bangladesh and Syria. But they also exclude prominent successes like Iran and Armenia.

13 Land to the tiller did not occur

It is difficult to see much significance in the distribution pledged to be achieved. An extraordinary 75% of rural households still hold under one hectare of land, the minimum to meet subsistence and to generate a modest surplus for further farm investment. To this extent most farmers are marginal farmers. Around 50% of all farmers are worse off: they have not enough land to meet food requirements. At the other extreme, 3% of households own 17.3% of the total arable area. Land to the tiller has simply not occurred.

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43 One ha = 30 kattha = 1.5 bigha.
Recent focus upon bonded labour may have saved the reform process from total failure

Not much about the land reform movement between 1952 and 1990 was about the landless tenant/worker. Redistribution was focused on farmers who owned some land but of necessity rented in additional land. Agricultural sample surveys were more interested in holding size than labour relations. Only in 2001 did the National Population Census inquire about land access in such a way that those without any land of their own could be identified.

The focus shifted in the 1990s onto the landless and particularly those in serf relations with landowners. A particular form of this exists in the five western Tarai Districts of Dang, Kailali, Bardiya, Banke and Kanchanpur, known as Kamaiya. To recap, most Kamaiya are of indigenous Tharu origin and lost their lands through indebtedness to mainly hill immigrants moving into their territory. Even where they continued to own land this was often not acknowledged in survey mapping during the 1960s and 1970s. Almost no Kamaiya obtained registered occupancy. Whole families were bound to landlords by profound indebtedness and food dependency with even free child labour invoked.

Civil society drew attention to their plight in 1990 (Box 15). An official survey of Kamaiya was finally undertaken five years later (1995). This identified 17,435 Kamaiya, some 13,000 of whom had no place to live of their own. Funds were allocated by government for their rehabilitation but progress was slow. It took another five years before Kamaiya were officially liberated (2001). Concerted action then got underway, largely provided by civil society agencies, with funding from international NGOs. Liberation was given legal force in 2002, the law cancelling debts and bonds and agreements made between bonded labourers and creditors. Multi-sector Committees were to be established in each district affected to oversee the provision of education, health, training, sanitation and housing assistance, etc., in support of freed Kamaiya.

Although referenced only to Kamaiya the law may be used to encompass all bonded labour and who could number several hundred thousand when finally enumerated. This is because in defining Kamaiya the drafters took the opportunity to define this as meaning ‘a person who provides kamaiya labour as Bhainshar, Gaiwar, Vardikar, Chhekarbar, Haruwa, Charuwa, Hali, Gothalo, Kamalari or under other similar names’. The last crucially includes Haliya, who have come to prominence since as bonded ploughmen of usually untouchable caste origins in hills areas, and whose case has been taken up in 2008.

By end of fiscal year 2003/04 12,019 Kamaiya households in the five Western Tarai districts who were homeless and landless had each been provided 4
to 5 kattha (0.16 ha) of land from public land sources, assisting with house construction and tools, and a wide range of uncoordinated NGO activities (Box 15). Since then a further 14,000 Kamaiya have been identified, and await similar support.

**SUMMARY OF THE KAMAIYA LIBERATION PROCESS**

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>Representatives from Kanchanpur, Kailali, Bardiya, Banke and Dang districts raise the issue of Kamaiyas at the All Nepal Peasants Association (ANPA) convention. Human rights activists Sushil Pyakurel and Prakash Kafle work with INSEC (Informal Sector Services Centre) to undertake survey in Kanchanpur, Kailali and Bardiya districts.</td>
</tr>
<tr>
<td>1991</td>
<td>The first Parliamentary session sees ‘Kamaiya liberation and giving them land rights’ tabled but government refuses to allow the matter to be discussed.</td>
</tr>
<tr>
<td>1992</td>
<td>INSEC publishes &quot;Bonded Labour in Nepal under Kamaiya System&quot;. Launches intensive lobbying at national and international levels.</td>
</tr>
<tr>
<td>1995/96</td>
<td>The budget earmarks funds for rescue and rehabilitation of Kamaiyas, including identification, Kamaiya group formation, a revolving loan fund, group savings scheme, mobilization, help to most indebted families, homestead land distribution, and skill training for alternative employment.</td>
</tr>
<tr>
<td>1996-2000</td>
<td>Supporting interventions by local NGOs (e.g. INSEC, BASE, RRN, GRINSO, and GEFONT) and international NGOs (e.g. ILO, Plan Nepal, Action Aid, Anti Slavery International, MS Nepal, Lutheran Word Service). Kamaiya Concern Group’ formed to coordinate action and for policy lobbying in which INSEC and ILO especially active. Some Kamaiyas liberated by employers; cases against exploitation and bondage registered with local governments, agitation mounting for liberation.</td>
</tr>
<tr>
<td>2000</td>
<td>Government announces liberation of Kamaiyas in Parliament in July following widespread agitation in the Kamaiya districts and around Parliament. A second enumeration of Kamaiyas; 18,400 households identified of which some 13,000 had no land of their own.</td>
</tr>
<tr>
<td>2001</td>
<td>Rehabilitation and support activities intensified by the Government, national and international agencies. Government distributes land to landless ex-Kamaiyas, and this formed basis for identity for targeting.</td>
</tr>
<tr>
<td>2001</td>
<td>ILO publishes influential report on Bonded Child Labour Among Child Workers of the Kamaiya System and launches &quot;Sustainable Elimination of Bonded Labour in Nepal&quot;</td>
</tr>
<tr>
<td>2002</td>
<td>Kamaiya Labour Prohibition and Regulation Act abolishing bonded labour and waiving debts</td>
</tr>
</tbody>
</table>
2003-04: 12,019 former Kamaiya households are effectively rehabilitated in the five districts, provided with 4-5 kattha of land and housing support, followed up with multiple development interventions from NOs.

2003: Opportunity to apply for identification as Kamaiya given by Government; 14,000 apply.

2005: ILO recognizes that the model of rehabilitation was sound on the whole. Government agrees to rehabilitate remaining Kamaiya in need.

2007: By December 2007 14,326 Kamaiya provided with land, 10,374 with skill training and 85 have received finance for house construction (this excludes provisions by NGOs). The 3 Year Interim Plan (2007/08-09/10) commits to provide land to 200,000 landless including 13,244 Kamaiya families. Also commits to issuing land certificates to Kamaiyas jointly in names of husband and wife. Loans are to be provided along with income generation and skill training.


### WHAT KAMAIYA LIBERATION MEANS TO KAMAIYA

12,019 assisted freed Kamaiya households now have land allocated by government, with a house with toilet and drinking water facilities. One third of households rent-in land to supplement their 4-5 kattha plots. Raising of pigs or goats is common to supplement income and self-employment. Two-thirds of households feel that their food security situation has improved, and more than half of the households have food grain stocks enough for more than ten meals. Three-fourths of households feel that their income has increased as a result of liberation.

Almost all children are immunized. School age children are either going to school or have participated/are participating in non-formal education or skill training programs. The incidence of child labour is rapidly falling. The adult literacy rate has improved and is higher now than national average. At least one person from the household has participated in skill training organized by government or non-government organizations.

Trade unions have begun to organize the liberated Kamaiyas. By and large, in agricultural works, the minimum wage is paid. Employment opportunities are diversifying, participation in non-farm wage works is increasing. At least one member from one third of households migrates for seasonal or long term employment.

Only half of the households have incurred loans. These are mainly through institutional sources, notably from local savings and credit groups. More than anything else, liberation has empowered Kamaiya; more than 90% of former Kamaiyas and their wives say they are able to choose their employer and feel confident they may quit the job by their own will.

15 Assistance to Kamaiya reshaped redistribution in negative and positive ways

Exclusion of the landless poor in reforms tends to sustain political, conflict and economic costs (Chapter One). The belated inclusion of the very poor in Nepal’s land reform is not to be trivialised even though so few are yet beneficiaries.

The shift of focus from equitable land holding into providing *homestead security* is reflected in the handling of *kamaiya*. They are given just enough land to build a house and meet only part of subsistence needs. These homestead plots are located however near to towns. This fits with an approach from the 1970s which aimed to cushion the departure of the very poor from agriculture by providing opportunities to take up other non-agricultural opportunities. The approach is being revived in India where homestead plots are considered an ideal vehicle for helping the extreme poor and peri-urban poor where redistribution of private lands has been truncated or is politically not possible (Annex A).

While better than nothing, the approach suggests a neo-liberal *‘little lands for little people’* syndrome. The poor are penalised once again for being poor and the existing distribution patterns are unaltered. This may be all that is possible in agrarian societies where will for land to the tiller is politically rejected or constrained.

In practice, the homesteading approach in rehabilitating Kamaiya has had these positive effects, at least according to members of one of the best supported schemes in Kapilbastu District –

a. Relocation of Kamaiya outside the immediate landlord sphere has helped increase daily farm labour rates;

b. Kamiya relocated near towns have been able to take up non-agricultural sources of employment such as rickshaw pulling, domestic labouring and construction;

c. Locating Kamaiya in groups affords opportunity for co-operative farming if desired, solidarity of enterprise and bargaining power, the last two especially seen in practice;

d. Group relocation has also made Kamaiya communities an accessible target for income-generating support and training, as well as a multitude of benefactor-driven developments from family planning to educational opportunities and provision of clean water supplies; and

e. It has made women and children much less vulnerable to coerced labour or personal services provision by landlords or their family members.
Other schemes are likely to have much less rosy views of their situation, and especially those which have not been located next to towns. In addition, the costs of achieving the above have been high financially and in terms of NGO-led facilitation. This raises queries as to how replicable this is. On the other hand, costs to reform have been avoided all through the process and failing to invest properly could have caused yet another failure, this time for the very poor. Assisting NGOs and INGOs are clearly proud of their efforts and have demonstrated that civil society has a key role to play in forcing governments to see their pledges through. However overall, the number of beneficiaries is minor and promises not to exceed 30,000 families.

More pointedly, it is unclear why those landlords to whom Kamaiya were attached were not bound over to partition their land in the same way as been required on lands held by registered tenants. In truth as not strictly tenants, they would have been recipient of very small lands but hardly smaller than their current plots, sometimes no more than 2 kattha. In addition, receiving land on its own is hardly sufficient for new farmers and the land reform thus far has been notoriously lacking in delivery of credit systems suitable for the poor to use. Finally, it may indeed be the case as Box 15 above suggests that a key element of liberation is removal from the sphere of the landlord.

16 Moving away from redistribution of private holdings?

Nonetheless, the focus of the 1990s and 2000s upon Kamaiya liberation as land reform is telling. In ways this is a replay of the eventual inclusion of landless in the settlements schemes as described earlier. Being better funded, better supported, and actually carried through does not remove the fact that once again it alleviates landlords from their responsibilities to tenants and workers and alleviates the state from the tiresome process of redistributing rights once and for all. As in the settlement schemes for Sukumbasi from the late 1970s, the provision of public land to migrants or existing very poor has consistently been pursued not to deliver distributive reform but to avoid it, and at the same time to help counter rising unrest.

Ironically, on both counts it has failed. Neither the inclusion of the poor in the colonization of the Tarai nor now attention to Kamaiya has been able to reach the numbers needed to have lasting effect. Nor did the former make inroads into grievance-ridden land relations which were recreated in the Tarai, and in more intense versions in many instances. In the same way, attention to Kamaiya (and Haliya) may remain more social programme affecting an (admittedly poor and oppressed) minority. A main question that will need to be asked in the next
chapter addressing emergent scientific land reform today, is how far this is to remain the case.

In the meantime, the landless are laying the path themselves. Organized reoccupation of government land is becoming pervasive throughout the country and especially in the Tarai. For example, a further 15,000 landless households in the same five Kamaiya districts had identified themselves as of September 2008. This has been by moving in groups to reside in forest areas to enhance their presence, voice and case. Many of the areas are Community Forests, that is, Government Land under the management of local Community Forest User Groups. In Dang District for example, the fringes of no fewer than 75 Community Forests have been so invaded (17% of all Community Forests in the district). Usually this encroachment is undertaken in a deliberate and orderly manner, and with apparent cooperation of the FUG leadership. There are complaints that some of these encroachers are not landless or bonded labourers but marginal and small farmers looking for a way to gain more land.

VI. CONCLUSIONS

1 The main beneficiaries of reform have been the elites

When looking at the balance book, it is difficult to see ordinary rural Nepalese as the major beneficiaries of the half-century of reforms. Tenancy reform has been only half successful, registered tenants still have often only a promise of land share, most tenants do not even have that and their conditions have not improved and may have got worse. Agricultural daily wage rates have improved but tenants are caught in an unresolved transition from tenancy to contractual wage work, in circumstances where sharecropping is still the dominant mode, the foundation of landlord-tenant relations.

The removal of institutionalized systems of providing unpaid compulsory labour to elites and government along with or in lieu of taxation has occurred and benefited some farmers. However the fact that bonded labour arrangements so abundantly still exist (and have to be repeatedly rendered illegal) limits the overall effect.

2 Power has been redistributed but not to ordinary tillers

Landlords have lost power but not so much power that they are unable to set conditions to their own favour. District officials rather than overlords now control transactions. Landlords have lost the few patronage functions they
were socially obliged to perform but not through the liberation of peasants. Determination as to who is deserving of a share of their land has largely been left up to the landlord. Tenants who have fought against this have found these cases bogged down in the offices and courts or chased from the village. To sustain access to landlord lands some farmers today have to provide more extra-farm labour than in the past, to kept eviction at bay.

There is evidence that landlords have also benefited from the block survey and registration initiatives under the reforms, capturing land occupied for generation by poor families without the means to protect their interests. Or, the state itself, has declared these marginal lands unsuitable for occupation or farming and thence public land, without providing the traditional owners with alternative lands.

3 Redistribution has been evaded

Many large owners did lose some land. This has hardly been through redistribution of above-ceiling lands, the total area of which was pitiful at 29,124 ha, at half of which has not ever been redistributed. There were also ways through which larger owners could hold onto their lands. Evasion techniques have been covered above.

To this must be added such loopholes in the law as provided by the Jhora Area Land Act in 1971. On the surface this was designed to transfer large forested holdings in three eastern Tarai districts to tenants of absentee landlords. However they were to pay for the land. Owners were to be compensated at five times the amount of the land tax. Because the law permitted the new allocatee to sell the land and even appoint a tenant on the land, this provided an easy route for landlord and tenant to reach an arrangement whereby the tenant was lent the money to buy the land, sold it back to the landlord and once again became his tenant.

Elites did lose tracts of forested land in the 1950s and 1960s. Again, ordinary citizenry did not gain. Instead the state took these lands even though they constituted the common property of communities and/or indigenous groups. Customary owners lost not just resources but ancient land rights. Enabling local forest user group control of marginal forests has been partial remedy but hardly compensation for dispossession, and depriving these managers of the ultimate incentive to protect and sustain these assets, ownership.
4 It is impossible to know exactly what the real land ownership situation is

The real distribution of rights has become more not less opaque through subdivision or sale. This is unproblematic in respect of immediate family members who would have inherited their share in due course. Where friends and other sources have been purchasers or name-holders, consolidation of class/caste privilege may have been the main result. Government registers are less help than they promise. They have been vulnerable to manipulation and are not systemised in ways which make it possible to identify all property of an individual, should he hold land outside the district.

5 Agricultural production was repressed rather than stimulated through the reforms

Despite the proclaimed objective to raise production, little if anything was done towards this or achieved. Even the measures committed to in the 1963 law were limited in this regard and not implemented. The savings and credit plan collapsed within a few years, depriving farmers of non-land based credit opportunities, never since revived. Cooperative development was limited. Infrastructural support was minimal. Land use planning and action against fragmentation did not materialise. A survey in 1971-72 found that only 5% of the cultivated area had seen improved methods since 1964.

The 1994/95 Badal Commission added measures such as establishing floors against fragmentation.44 It reinforced the priorities laid down by the sister commission for agricultural development which resulted in the ambitious Agriculture Perspective Plan 1995. This had (and still has) a ten part approach with a focus on six inputs (irrigation, fertiliser, technology, credit, farm roads, and rural electrification) with four priority output areas (livestock, high value commodities, forestry and agribusiness). The dismal performance of the Plan would handicap the land reform during the 1990s and since. Conflict played a role but review in 2007 makes it clear that institutional, policy and related failures including lack of investment were main causes. Agricultural growth remained at 3.3% during 1997-2002 (cf. India at 4.56% growth in 1999) and fell to 2.67% between 2002 and 2007. Failed tenancy reform and uncertainty as to future ceilings and rights have probably played an even greater role than failed redistribution in truncating production, neither landlord nor tenant having incentive to invest.

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44 It was recommended that parcels should not be permitted to fragment below these fixed levels: Mountains: 0.1 ha; Hills: 0.05 ha; Terai: 0.067 ha; Rural areas of Kathmandu Valley: 0.05 ha; Urban areas - Kathmandu valley: 0.01 ha and urban areas in Mountain and hills: 0.02 ha. Terai: 0.05 ha. Subdivision at inheritance was also to be bound by these floors. Should a farmer purchase a contiguous plot he should be exempt from the registration fee.
Off-farm growth did not materialise out of the land reforms

Landowners did not receive promised bonds for their surplus lands. Sales of land ahead of ceilings and after kept the price of farmland high and worth holding on to even if left fallow. Access was kept beyond the reach of small and marginal farmers in the absence of credit or input support. Land taxation was not revised to heavily tax larger holdings. Absentee landlordism was not dealt with. Despite limiting rent to 50% of the main crop this is high enough to prevent large holders selling the land and investing in alternative income-generating activities. Manpower and some capital may well have been diverted into the urban sector but it is noticeable that growth has occurred mainly in non-industrial service and financial sectors, including land estate agents.

Land administration reform has continued to play a less than neutral role

Improved survey and registration of entitlements became a main part of the reform programme and remains the Ministry of Land Reform and Management’s main preoccupation. There are numerous complaints by poor villagers that their occupancy was not recognised at survey. Corruption in the process is frequently alleged; with a bribe a plot may triple its size on the map, or without a bribe, lose area and even disappear altogether. Or be placed in the name of another who can pay. Poor families have found no remedy in complaints.

The poor are not aided by literacy and related requirements to register or formalise transactions. They may not have been informed of the survey’s purpose. If they cannot prove their occupancy (and this needs documents) they lose their land easily. Many of the poor still do not hold citizenship certificates testifying to their identity. Richer households with already larger lands have been able to register lands even including forested areas while poor people who cannot pay bribes have been unable to register even their crop land. There are still reports of even families with tax payment receipts being unable to register their lands.

Kipat areas have been uniformly worst affected by survey and registration. With their focus upon the farm and the removal of non-farm assets from the population, large areas were lost and continue to be lost at survey and

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45 Basnet 2008 cites a case in 1975 where Dalits living near the forested land within a VDC in Dadeldhura District found their land not appear on the village map but under the name of the Local Secretary. This scoping study happened to be in a village where a similar fate awaited the poor in a VDC in Rupandehi District; their parcels were mapped but magically disappeared into village public land at registration.

46 Ayral and Kerkhoff 2008 found that 85% of Chepang in 2007 did not possess citizenship certificates or hold any land registration documents.

registration. Survey undertaken where shifting cultivation within communal forested zones is practised has proven rapacious. Forest fallow is not recognised as integral to holdings and those practising shifting cultivation lost much of their land through this route from the 1970s, much of that land now held by non-indigenous groups or government.48

8 The reform approach has been riddled with strategic failures

It is not difficult to identify shortfalls limiting success of what could and should have been a relatively straightforward, swift and tangible case of Asian redistributive reform. Limitations include –

a. Ceilings were too high to generate the surplus needed to make a difference

b. Implementation was too slow, allowing wriggle room for landlords

c. The intentions over the first 30 years were piecemeal and by the time the 1995 commission was in place, the initiative had been lost

d. It took more than 40 years to even notice and include a key target group, the rural landless

e. The reform lacked the ingredients to make it workable; some core tools were adopted (ceilings, rent reform, etc) but others were not; the lack of subsidized or cooperatively assisted inputs and cheap to interest-free credit to kick-start farmer independence from moneylenders was possibly the worst lacuna after lack of real redistribution

f. Investment in the agricultural sector was minimal, leaving an already struggling sector stranded; road and irrigation development might have made a difference although insecurity generated by the reform was more pernicious

g. The muddled approach to tenancy reform hindered rather than helped with disastrous results for most tenants

h. Too many loopholes were left unplugged, ranging from failure to remove the exemptions on Guthi lands to failure to act to prevent evasion of ceilings

i. The pre-condition for effective reform of having reliable information about landholding in the village was never met

48 See Aryal and Kerkhoff 2008 for carefully documented cases for Rais, Sherpas and Shingsas in Sankhuwasabha, Chitwan and Dhading districts and Chepung.
j. Financial and manpower investment in the reform were minimal, including by international donors

k. Monitoring, enforcement and follow-up went no further than law making or holding of commissions of inquiry from which no action stemmed.

l. Rule of law was weakened by leaving new laws to implement themselves and then having to re-enact more or less the same provisions time and again (e.g. unjust farm labour practices were made illegal seven or more times; 1954, 1959, 1963, 1964, 1972, 1997, 2002)

m. A too narrow version of reform was pursued, with not a single initiative geared to reform how government performed, regulated or administered lands or to query its own capture of most of the country area. Nor was a real link with overall economic policy forged

n. There was sustained lack of government commitment to the government’s own rhetoric. Land reform was never made a top economic priority

o. In the absence of a clearly integrated economic strategy, the monopsonic landlord-labour relationship remained unchanged, enabling landlords to retain the upper hand as expressed today in continuing evictions/threat of eviction, de-securing of occupancy and use and pauperisation of workers and tenants through sustained control of rent/shares.

9 There was limited will for reform anyway

The will to reform was clearly mild to non-existent. It is not coincidental that the progenitors of reform were in fact the Nepali Congress Party and then the royalist Panchayat Government. Statements to the effect that government did not intend to cause hardship to the landowning class were periodically issued. ‘Class coordination’ was the cited objective of the Land Reform Act 1963, not reform in class relations. At most the objective was to break the back of Rana-defined feudal power and vest this in the new power-holders, equally tied to the landlord class.

10 The militancy historically needed to coerce reform did not exist

Autocracy, as combining in this case a will to reform with the power to coerce reform never existed from 1951 until 2006. The government of the day remained closely identified with landlordism and privilege and they in turn with the military, who withheld rather than used their authority to support land reform.
The commitment to reform was not sufficiently grounded in mobilisation of the majority marginal farming population to overcome this. It is no coincidence that many reforms have been borne out of social revolution or war. Unfortunately this was to see repetition in turn of the century Nepal.

Reform — or lack of it — has changed the state-people relationship

Failure to reform ultimately generated the essentials to reform in democratic systems where autocracy does not exist; public awareness, organized peasant demand and local level mobilisation, adding up to popular empowerment. The manifestations of this are now seen and felt beyond the standard bearers of reform, the communist parties and especially the Maoist movement.
Land Reform in Nepal – Where is it coming from and where is it going?
Chapter Four

LOOKING AHEAD
OVERVIEW

1. In words, land reform is high on the post-conflict agenda. Most binding is the constitutional commitment to implement scientific land reform by doing away with feudal ownership and to provide land to the landless and members of disadvantaged groups.

2. Scientific land reform is emerging as no more and no less than agrarian land reform combining land to the tiller with major investment in the agricultural sector itself. This is most cogently articulated in presentation of the Fiscal Budget for 2008-09. Although better articulated this does not depart significantly from earlier commitments, even as made in 1960.

3. Action plans do not (yet) match the rhetoric. The Ministry of Land Reform and Management’s Three Year Plan is strongly biased to record systems modernisation (survey, registration and transaction management) offset by plans to make land available to 200,000 land poor (less than one percent of the rural population) with concentration upon 13,244 already-identified freed bonded labourers. The Budget Speech reiterates this but adds that the poor will be assisted through cooperative farming on marginal public lands, including under electricity transmission lines and community forest areas, lands upon which they already greatly depend. This ‘little lands for little people’ approach hints at abandonment of redistribution within the skewed private land sector, with no disturbance to large landholding implied. The strategy also has ominous echoes of past mechanisms to avoid tackling the structural and neo-feudal relations still pertaining in the private sector. No mention is made of new ceilings, enforcement of existing ceilings or extension of registration to an estimated one million unregistered occupants. Idle land is to be subject to a special tax; this may well encourage owners to sell land which might be better partitioned to (still unregistered) tenants. The enthusiasm with which the Budget Speech advocates modernisation of agriculture but without a clear distributive strategy around the resource itself suggests that redistribution may be off the agenda.

4. Alternatively, the financial year is too short and the budget plan handicapped by the pallid commitments of the Interim Plan. Moreover both ministries are committed to see another High Level Land Commission formed, and which will flesh out a comprehensive programme.

5. That Commission will face a host of challenges. The greatest challenge will be to pay close attention to the reality that legally-instructed redistribution has failed not once but twice in Nepal and in the process undermined the rule of law. The substance of reform needs reform to identify interventions that genuinely limit landlessness and land poverty. Process also needs close review, taking into account that enforcement will be just as difficult as in the past in an environment which is more politically divided as to objectives and means than even before.

6. The risks are many, including both failing to act swiftly enough to curtail loss of public confidence and stem reactive land invasions, and acting too hastily, failing to structure change in ways which protect it from old failures to deliver.

7. There is also a risk in failing to expand the vision of reform sufficiently to encompass new concerns such as arising around ethnically-defined customary land rights, the status of public lands and the strategic shifts needed to successfully bring equity-based reform into the growing urban sectors. Additionally, there is a
danger of confusing record systems reform for governance reform and entrenching rather than reforming the way in which land relations are governed and by whom.

9. Opportunities to get it right are not lacking. The post-conflict population is much more aware of the issues and better represented within civil society, political and governance realms. It is more empowered and expects and demands real change. Trends towards devolved governance, as being expressed in federalism or local government reform, empowering village communities offer a clear opportunity for shifting classical land reform onto safer and sustainable grounds.

10. This may be delivered in a community based approach to land reform. This looks to ordinary communities as planners, implementers and enforcers of their own land distribution processes, operating within the bounds of nationally prescribed principles and procedures. Inter alia these national guidelines would specify the way in which decisions are to be made accountable to all members of the community and governed by majority consensus. District land office functions would be significantly trimmed and refined to roles as technical advisers and monitoring watchdogs of fair practice.

11. Such an approach has many advantages, including helping sidestep political impasse, helping to overcome financial and manpower constraints at implementation, overcoming lack of enforcement of new rules, allowing flexibility at the level it is most needed, and enabling those most affected by the reforms to be directly party to decision-making. Youth, a critical sector in New Nepal and the future right-holders can be more easily involved. Majority local ownership of changes engendered by a community-based approach also help protect reforms from changes through changing political leadership.

12. A community based reform approach has the added advantage of providing a foundation upon which sustainable community based land administration over the medium term may be built; each community maintaining its own community land register and recordation of transactions and being able to govern property relations within the community in accordance with its own laid down by-laws. This includes acting against idle lands and abusive landlord-tenant relations, ensuring tenanted land is partitioned and being able to register longstanding occupants of local public lands.

13. Perhaps the most valuable immediate assistance which donors can give New Nepal is to assist the Commission and associated actors to explore the workability of this vision. Learning by doing experiences in all regions and zones could be promptly fielded, providing hands-on exercises to arrive at workable procedures. In the process many knowledge gaps can be filled as to real facts and trends about landholding and labour relations.

14. It is upon such community collected and grounded information that the real picture of distribution in a community can be registered, the facts as to absentee landlordism in the village, and such matters. Consideration will usefully be given to launching a nationwide accounting founded upon carefully constructed and tested community-based information collection.

Other helpful exploratory exercises include the need to assist indigenous nationalities concretise where and how collective customary property rights need now to be recognised in a fair and workable manner; examination in the sub-continent as to routes through which small holdings can become platforms for commercial production without resort to large scale farming; and review as to how far homestead provision in peri-urban areas can satisfactorily meet the demands of burgeoning landless rural/urban poor.
I. Land Reform in 2008

Land reform is high on the agenda

Public commitment has been made to land reform backed up by legal, policy, planning and budget commitments. The Comprehensive Peace Accord (November 2006) recognized the importance of land reform to transform both armed and structural conflict into peace; poverty is a threat to peace and removing poverty includes equitable land rights (Box 17).

<table>
<thead>
<tr>
<th>BOX 17 LAND IN THE PEACE AGREEMENT 2006</th>
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<tbody>
<tr>
<td>Both parties have agreed to formulate programmes and policies for political, social and economic transformation and management of the existing conflict through positive means (including) –</td>
</tr>
<tr>
<td>3.3 … Bring the properties of late King Birendra, late Queen Aishwarya and their family members under the control of the Nepal government and use it for the welfare purposes through a trust. All properties acquired by King Gyanendra by virtue of him being the King (palaces, forests and conservation areas, heritage sites having historical and archaeological importance) shall be nationalised…</td>
</tr>
<tr>
<td>3.6 End all forms of feudalism and prepare and implement a minimum common programme of socio-economic transformation on mutual understanding.</td>
</tr>
<tr>
<td>3.7 End feudal land ownership and formulate the policies for scientific land reforms.</td>
</tr>
<tr>
<td>3.10 Adopt policies to provide land and socio-economic security to backward groups like landless bonded labourers, tillers, Haruwa-Charuwa and other such groups…</td>
</tr>
<tr>
<td>3.11 Adopt policies to take strict actions against the people who have worked in government positions and have amassed a huge amount of properties through corruption.</td>
</tr>
<tr>
<td>5.2.8 Both parties express the commitment to allow without any political prejudice the people displaced due to the armed conflict to return back voluntarily to their respective ancestral or former residence, reconstruct the infrastructure destroyed during the conflict and rehabilitate and socialise the displaced people into the society.</td>
</tr>
<tr>
<td>7.1.1 Both parties reaffirm their commitment to respect and protect human rights and international humanitarian law and accept that no individual shall be discriminated on the basis of caste, gender, language, religious, age, ethnicity, national or social origin, property, disability, birth or any other status, thoughts of conscience.</td>
</tr>
<tr>
<td>7.5.5 Both parties have agreed not to illegally seize or capture anyone’s private property.</td>
</tr>
</tbody>
</table>

Source: Comprehensive Peace Agreement as agreed between the Prime Minister of the Government of Nepal and the Chairman of the Communist Party of Nepal (Maoist) on November 21, 2006.
The *Interim Constitution 2007* binds the State to pay compensation for compulsory acquisition of property for public purpose (but does not establish the basis upon which it will be paid). It commits to implementing *scientific land reform* ‘by doing away with feudal land ownership’. Socio-economic security including land is to be provided to landless squatters, bonded labourers, tillers, *Harawa-Charawa* as well as unspecified ‘economically and socially backward classes’ (Box 18).

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<table>
<thead>
<tr>
<th>BOX 18</th>
<th>LAND IN THE INTERIM CONSTITUTION 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art 19.</td>
<td>Right to property</td>
</tr>
<tr>
<td>(1) Every citizen shall, subject to the laws in force, have the right to acquire, own, sell, dispose of and otherwise deal with property.</td>
<td></td>
</tr>
<tr>
<td>(2) The State shall not, except in the public interest, requisition or acquire, or otherwise create any encumbrance on the property of any person. Provided that this clause shall not apply to any property earned in an illicit manner.</td>
<td></td>
</tr>
<tr>
<td>(3) There shall be given compensation for any property requisitioned, acquired or encumbered by the State in the course of enforcing a scientific land reform programme in the public interest, in accordance with law. The compensation, the basis thereof and the procedure therefore shall be determined by law.</td>
<td></td>
</tr>
<tr>
<td>Art 20.</td>
<td>Right of women</td>
</tr>
<tr>
<td>(4) The son and daughter shall have the equal right to ancestral property.</td>
<td></td>
</tr>
<tr>
<td>Art 29.</td>
<td>Rights against exploitation</td>
</tr>
<tr>
<td>(2) No one shall be exploited in the name of any custom, tradition and usage or in any manner whatsoever.</td>
<td></td>
</tr>
<tr>
<td>(4) No one shall be required to perform forced labour.</td>
<td></td>
</tr>
<tr>
<td>Art 30.</td>
<td>Right relating to labour</td>
</tr>
<tr>
<td>(2) Every worker and employee shall have the right to form and join trade unions and carry out collective bargaining for the protection of his or her respective interests, as provided in law.</td>
<td></td>
</tr>
<tr>
<td>Art 33.</td>
<td>Obligations of the State</td>
</tr>
<tr>
<td>(e) To set a common minimum program on socio-economic transformation doing away with feudalism in all its forms and keep on implementing the program;</td>
<td></td>
</tr>
</tbody>
</table>
The Common Minimum Programme of the three-party National Consensus Government (August 2008) adds specifics: a Land Reforms Commission will be instituted, certain debts will be waived, properties of kings and royal classes will be tracked down, land access by landless and tenants will be improved and those who lost property as a result of conflict will be compensated (Box 19).
2 Back to business as usual

None of the above provisions are surprising. If anything, it is surprising that so little changed following the civil war in this standard reissue of pledges to land reform, and given that delivery has been so poor. At the very least a change in delivery tactics would have been welcome.
LAND REFORM POLICIES IN THE PLAN FOR THE NEXT THREE YEARS

1. High level Land Commission to be established to solve land problems including re landless and squatters
2. Data collection to be carried out
3. Land distribution with priority on landless and unmanaged dwellers (squatters), labour, Dalits, Adibasi Janajatis, Madhesis and women
4. Land to be redistributed to freed Kamaiyas, along with loans, training for income-generating activities
5. Encroachment on government land to be discouraged through meeting needs of landless
6. Joint titling for spouses among freed Kamaiyas, landless and unmanaged dwellers to ensure stable female access
7. 50% discount on registration charges when land purchased in name of by females
8. Tenancy occupancy to be solved with new rules
9. Finalization of dual ownership applications with a time to be specified
10. The bases of scientific land reform to be developed
11. Provision of land via surplus from ceilings to landless
12. One person one land ownership certificate policy to be developed and applied
13. National land policy to be formulating encompassing all activities
14. Land use strategies to be developed to discourage non-agricultural use of fertile land
15. Implementation of programmes on basis of new land use plans where already prepared
16. A specific legal framework to be developed for contract (lease, renting) and cooperative farming
17. Legal steps to be taken to discourage idle land
18. Land consolidation to be encouraged with legal limitation on fragmentation below a fixed size
19. The role and scope of the Guthi Corporation will be reviewed and arrangements made for administering Guthi land through revenue offices
20. Conservation of ancient religious and cultural heritage sites to be undertaken in coordination with Ministry of Culture, Tourism and Civil Aviation
21. Capability of land management, geographic information and survey personnel to be upgraded with training including university degree courses
22. New land information system with strengthened central land archive
23. Computerization of information and recordation systems
24. New cadastral GPS-based mapping, focusing on high value and high transaction areas
25. Infrastructure development for land record offices damaged by conflict
26. One stop shop land administration system to be put in place involving a single district office
27. Land valuation research to rationalise valuations consistently
28. Remove backlog of pending land disputes cases by reviewing legislation, regulations, procedures and establishing tribunal to clear cases including applications for land registration, tenancy and regarding ceilings

3 The land ministry plan is geared to systems reform not land reform

The Ministry of Land Reform and Management’s *Three Year Interim Plan* (2007/08-2009/10) offers a predictable but wide-ranging plan of action. No less than 36 working policies/objectives are identified. The plan is dominated by systems improvement with a focus on new cadastral and geodetic survey, computerization of land records and land use mapping (Box 20). The objectives suggest existing policies are to be sustained. Dual tenancy and lack of enforcement of ceilings are noted as needing action. Concretely, the plan proposes to give homesteads to 200,000 landless and dwellers of unmanaged settlements and continue the process of rehabilitating the already identified 13,244 freed Kamaiyas yet to be settled (Box 21).

Innovations on past plans are few. These include establishing a tribunal to clear the backlog of land cases, discounting registration charges when women, disabled or members of a deprived class acquire land, issue of land certificates to

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**BOX 21**

**SPECIFIC MINISTERIAL PLANS FOR LAND REFORM**

- **Disputes**
  - Clear 103,000 land disputes through decisions of Land Commission and establishment of Tribunal
  - Kamaiyas and other landless
    - Provide land to 200,000 landless and unmanaged dwellers families
    - Conduct research to increase female access in the above
    - Rehabilitate 13,244 freed Kamaiya families with technical training etc including provision of ‘suitable land’ to 700 families

- **Women & other disadvantaged groups**
  - Provide 50% waiver on registration charges when land purchased in name of female member of household, a disabled person, a person from a deprived class and family members of martyrs of the People’s Movement

- **Land Administration**
  - Develop reward-based skill training and enterprise encouragement training within vocational training
  - Construct 20 new land offices and repair 25 others
  - Conduct study to make land valuation consistent and realistic
  - Conduct study towards one window system of land administration
  - Order records in 104 offices
  - Scrutinise land ceiling information in 75 districts

freed Kamaiyas jointly to husband and wife, integrating the different functions of land administration in single one-stop district land offices, and advancing computerisation of records.

A number of standing recommendations of the Badal Commission from 15 years past are reiterated. One of the most practical is to introduce a single certificate system in which all properties belonging to an owner are listed. Idle land is to be subject to restriction and Guthi is to be administered by District Revenue offices. Ceilings are to be enforced and ‘the basis for a new ceiling developed’.

4 Land reform gains a clearer conceptual foundation

The rationale for sustaining a commitment to land reform is not laid out. This is remedied in the Minister of Finance’s presentation of his budget for 2008-09 in September 2008. This too echoes presentations of the past, although with possibly more emphasis upon agricultural transformation. The Minister declared that agricultural revolution should be the basis of building New Nepal through two thrusts: ending the feudal land ownership and relations that have existed for hundreds of years and through moving the sector from subsistence to commercialization (Part 5 para. 53).

“Overall transformation of the agriculture sector cannot take place without breaking the century-long feudal production relations rooted in the sector ... (in which) peasants cultivating the lands do not have their ownership and those owning the land do not cultivate, productivity is always low creating adverse impact on the economic growth” (s. 12 b).

The transformation to achieve rapid economic growth and poverty alleviation will be

“...to increase productivity of agricultural sector and shift the excess manpower from agriculture to the other sectors of economy by way of creating opportunities for gainful employment”.

5 Scientific reform is no more and no less than classical agrarian reform

Clearly the government has taken on board the fact that provision of land to tillers is insufficient on its own to raise agricultural productivity, that supporting interventions for the sector are genuinely needed to trigger its growth and to feed into the transformation of the agrarian state overall. This is hardly new but at least superior analytically to the brief explication of scientific land reform in the Three Year Plan as ‘Harmonising programs with forestry, water resources, construction and agriculture to enhance productivity’ along with ‘Ensuring
access to simplified and scientific land information administration and services’ (Ch. 11).

The clearest idea of the intentions of scientific land reform is unsurprisingly found in the *Manifesto of the Communist Party of Nepal – Maoists (CPN-M)*. That document itemises land reform as comprising tenure reform, tenancy reform, redistribution and then lists sixteen interventions to revitalise and modernise agriculture (Box 22). Nonetheless, the interventions in and of themselves are not new, having been pledged to in the earliest reforms – but not delivered. What is slightly new is the emphasis they gain in the political and financial ministry’s vision of land reform. Supposedly, it is this emphasis which makes land reform now more ‘scientific’.

**BOX 22  THE MAOIST AGENDA ON LAND REFORM**

<table>
<thead>
<tr>
<th>Tenure reform:</th>
<th>Clear farmer property rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenancy reform:</td>
<td>Land to the tiller: end of feudalism</td>
</tr>
<tr>
<td></td>
<td>End of absentee landlordism</td>
</tr>
<tr>
<td></td>
<td><em>Kamaiyas</em> (bonded labour) to be emancipated</td>
</tr>
<tr>
<td>Redistribution:</td>
<td>Ceilings to be imposed, with variation by agro-ecological zone</td>
</tr>
<tr>
<td></td>
<td>Tax on idle land</td>
</tr>
</tbody>
</table>

Interventions to revitalize and modernize agricultural production:
1. Cooperatives to enable farmers to lobby for better prices
2. Minimum price controls
3. Crop diversification with emphasis on high value, small volume and exportable products
4. Animal husbandry, fishery and horticulture developments
5. Agro-based value-added industry
6. Irrigation in middle hills, inner Tarai and Tarai
7. Fertilizer factories
8. Agricultural and forestry education including university
9. Road development
10. Crop storage developments
11. Productive tree and herb planting
12. Land classification to guide land use
13. River control and soil conservation
14. Land development and small enterprise banks for loans
15. Grants to landless and small farmers
16. Attention to biodiversity, use of natural fertilizers and pesticides promoted

6 The vision of the Badal Commission is revitalised but the challenges remain the same

For as long as these plans remain on the drawing board, the vision is a replay of the recommendations of Badal’s High Level Land Commission of 1995. It will be recalled that the Commission listed backward technologies, lack of farm input price regulation, lack of roads and transport to bring goods in and out, and absence of year round irrigation as main impediments to raising farm productivity. It had endorsed the ten priority spheres for action that were being identified concurrently by the sister Agriculture Perspective Plan, advocated measures to limit fragmentation and to regulate land use and had advocated institution of a minimum agricultural wage. In summing up priorities, ‘land reform and land utilisation policy’ were listed as but one element of the overall approach to advance agriculture. These were commitments, upon which virtually no progress was made. Instead, civil war erupted.

7 Most parties support land reform as it is being articulated

Understandably, given the frustrations around real stagnation in farming, support for the agricultural productivity focus is uniform across the political spectrum as seen in party manifestos (Box 23). Even the Tarai Madhesi parties have taken up the call.

Meanwhile the pledge to abolish feudalism has taken on a human rights dimension. No social leader or politician may comfortably advocate explicitly for landlords and thus landlordism today – and none of the parties attempts to do so. Politically, land to the tiller vision has been carried a little more firmly into public policy. In part it does so through the emergence of the Communist Party-Maoist (CPN-M) as the dominant political actor after a decade of taking its cause to arms, and putting redistribution into practice in regard to targeted landlords, the legitimacy of this approach notwithstanding. The partnership of the United Marxist-Leninist Party (UML) adds to the consolidation of redistributive land reform in the agenda.

However, it as well to remember that abolition of feudal land relations has never been the preserve of communist parties in Nepal and that in fact its progenitor in public policy was the Nepali Congress Party, which campaigned in 1958 and 1959 on what was then a new slogan - ‘land to the tiller’.
Chapter four: Looking ahead

MAIN POSITIONS ON LAND REFORM IN PARTY MANIFESTOS 2008

Nepal Communist Party-Maoist
Redistribution: Land to the tiller, with abolition of feudal tenancy practices and absentee land ownership, with free distribution of land to labourers, tenants, freed bonded labourers, landless and very poor, imposition of ceilings
Promotion of accelerated agricultural growth
Joint titling of spouses

Nepal Community Party-United Marxist-Leninist
Eliminate feudal land ownership and scientific land reform, land to the tiller
Introduce robust law against under-utilization of land (overlong fallowing)
Protect housing and employment rights of kamaiyas, haliyas, haruwas, churuwas and other marginalized groups

Nepal Communist Party – United
Redistribution of royal land, birta, guthi and large landlords to tillers, poor, landless
New land ceilings
Cooperative farming to halt fragmentation
Elimination of peasant indebtedness
Subsidised inputs and provision of irrigation and marketing
Fair agricultural wage rate
Employment security to ploughmen, cattle keepers, freed bonded labourers
Housing to freed bonded labourers
Eradication of kamalari and haliya systems and arrangements for lodging, food and employment

Nepali Congress
Strengthen cooperative movement and availability of micro-credit
15 year agricultural promotion plan with credit, irrigation, market access, seeds, fertilizer & storage facilities, roads
Consensus to be sought for scientific land reform and land use policy
Solidarity expressed with right of disadvantaged communities and groups including landless to recognise identity and rights including ‘security and development’ of landless, kamaiya, badi and others

Rastriya Janamorcha Nepal
Repeal exploitative land laws and end feudal peasant exploitation
Redistribute land above ceilings without compensation including royal lands, large landlords and institutions and redistributed free to poor and landless
Minimal agricultural wage
Protection of tenancy rights

Terai Madhesh Loktantrik Party
Promotion cooperative farming, communal irrigation, market infrastructure
Long term plan for the Tarai’s agricultural development

Nepal Majdur Kisan Party
Revolutionary land reform with land to the tiller
Make distribution more equitable through redistributing above ceiling lands to tillers
Limit elite capture of lands and wealth

Sources: Manifestos of the parties towards the Constituent Assembly Election 2064 (2008).
8  A more organized peasants’ rights movement is evident

The pro-poor civil society land reform movement has without doubt contributed to keeping land reform on the agenda. This has become more active with each passing year since it first brought the matter of bonded labour to parliament in 1991. As shown in Chapter Three, this follows some decades of an emergent Sukumbasi (landless) movement, but one which never became in and of itself a specific political party.

The agenda of the civil-society led peasants’ rights movement has widened, now closely aligned with civil demand for human rights by women, ethnicities and former lower and untouchable castes. These shifts, combined with conflict over 1996-2006 have strengthened the land rights agenda. All but the most conservative parties feel bound to express solidarity with the rights of indigenous peoples/janajatis, women, Dalits, Muslims, landless, and bonded labourers in their party manifestos. However few go so far as to say this requires redistribution of farmland for those rights to be secured (Box 23).

Many practical elements of the civil society programme have entered the mainstream; from advocacy for joint husband/wife titling, measures to remove the backlog of land cases to giving land free to kamaiya and other bonded labourers and other disadvantaged landless or land poor. In fact, with exceptions, there is so much commonality in the civil society agenda, the Badal Commission recommendations and the communist/socialist party agenda that it may be safely concluded that the commitment to reform land relations has a fairly wide public base upon which to build. In these circumstances it is difficult to see how reformism cannot continue – at least in pledge.

9  The fundamentals are still in dispute

The real divisions remain in the core issue of if and how productive land is redistributed. The current conservative partner in Government, the Tarai coalition is the one party which stopped short in its 2007 manifesto of committing to any measures which might alter the distribution of land. However, for as long as the Constitution is in place and pledges to ‘do away with feudal land ownership’ and provide socio-economic security including land to landless squatters, bonded labourers, etc., even that Party can hardly demur in at least distribution of land to the most poor and most disadvantaged rural households, or at least not until a new Constitution with contrary provisions be put in place.
10 Taking the easy option

More telling is the limitation which government and the Maoist party have themselves placed upon redistributive ambitions. Land to the tiller will be pursued – but at this stage indeed only for the extreme rural poor - and not through redistribution.

This is seen in the sustained focus upon Kamaiya/bonded labour sector and their resettlement. Activities around this constitute one of the six programmes of the Three Year Interim Plan. This initiative affects no more than 200,000 households or less than one percent of Nepal’s estimated 24 million people living today in rural areas (4.82 million households). Should this group of most poor be provided a homestead plot of two kattha (one fifteenth of a hectare or one tenth of a bigha) Government need only find 13,333 ha of land overall. Should at least half the target group receive more substantial but still extremely modest plots of arable land at five kattha each (0.16 ha) this will require only an additional 16,666 ha, or 23,332 ha over all. The Ministry of Land Reform and Management’s Plan does not even go this far; it commits over the next three years to providing ‘suitable land’ to only 700 families or a token 117 ha over the coming three years. Thus far land for former kamaiya has been provided out of public land, and this remains the promised source for further provision. The private landholding sector need not be disturbed.

Tackling the land rights of the poorest of the poor is critical in any reform. It could also be argued that this is the right place to begin.

It remains however an easy option. At 200,000 households this level of reformism does not even reach the full body of landless in rural areas which even the 2001 Population Census identified as around 20% of the rural population or one million families at today’s projected population levels. Nor does it tackle the equity or farming needs of the minimum 47% of landholders known to have less than 0.5 ha of farmland and barely able to eke out subsistence. As explored in Chapter Two these two groups together comprise at least 2.5 million households.

A commitment to redistribution was noticeably absent in the Budget Speech agenda. It was silent on the subject of ceilings, not even confirming the pledge in the Three Year Plan that ceilings would be enforced and revised. The Speech commits only to an indirect driver towards some redistribution by proposing a heavy tax on idle land. This could indeed release such lands into the market place, and which better-off households would acquire. Along with no reinstituted
ceiling, land acquisition and polarisation could sharply rise. Moreover, the justification could well be that ‘agriculture now needs large farms’.

Finding middle ground or a new agenda?

A lot of excuses for the continued absence of a clear plan to redistribute land in the private landholding sector may be found. The Maoist government operates in partnership with the conservative Madheshi Party which is the only political party to not support redistributive land reform. The government also has the Nepali Congress Party in opposition, which although not against redistribution in principle, nursed through no less than 30 years of reformism stymied by its own lack of real enthusiasm. It might be argued that the Maoists are simply awaiting electoral victory in 2010 before advancing a rigorous programme of redistribution to the benefit of all rural land poor. In addition, land reform is to be addressed by the tasked Land Commission, although it too will have multi-party representation.

It could also be concluded that missing tangible commitment to redistribution in the Minister of Finance’s Budget Speech is simply that a one year timeframe is too short to advance this, and government will have its work cut out even seeing through the debt waivers and provision of lands to former bonded labourers. The Ministry of Finance was also almost certainly limited by the established Three Year Interim Plan agenda of the Ministry of Land Reform and Management.

Nonetheless, it is concluded that the communist parties themselves may be revisiting the utility of the redistributive reform and specifically, its central instrument, imposition and enforcement of ceilings on private land holding.

The message is furthered by the Minister of Finance’s introduction of a land & income tax system, set at 10% of both values (Box 24). ‘Tax, don’t appropriate’ is the message. The Minister made clear that once those taxes are paid, protection of private property is assured. In circumstances where ceilings are neither enforced nor lowered, this could be disastrous for equity objectives. Feudalism has been sustained in Nepal and many other countries precisely on this strategy; those who can pay tax get to keep the land. They in turn squeeze contributions out of those who actually farm. It can hardly be the case that this strategy rests unchallenged.
Chapter four: Looking ahead

SPECIFIC ACTIONS IN LAND REFORM IN THE BUDGET SPEECH 2008-09

Under Land Reforms, these commitments are made –

i. Establishment of a High Level Scientific Land Reform Commission for the abolition of feudal land ownership and production relations, with no further detail added.

ii. An integrated land record regime, to be extended to all districts within two years and comprising computerization of all records and issue of single certificates to each holder, encompassing all parcels owned by that individual.

iii. Compilation of a record of public and government land by mid-May 2009 to help protect against increasing encroachment, and

iv. Liberation of bonded ploughmen (Hailya) and Rehabilitation of Free Bonded Labourers (Mukta Kamaiya) estimated as numbering altogether around 35,000 households only (paras.78-81).

Interventions listed under other parts of the Speech –

v. Waiver of all debts of small farmers living below the poverty line and Bank debts on loans of small farmers up to Rs. 30,000, Banks to be reimbursed by Government (para.49);

vi. Imposition of a special tax to discourage keeping arable land unploughed (para.67);

vii. Retrieval of property of the former kings and royal families and put these to the benefit of the general public (para.23);

viii. Provision of housing arrangements for the real landless/homeless along the banks of the rivers of Kathmandu Valley (para.162);

ix. Creation of cooperatives for small farmers in every village (s.15 B.1 para.56); and

x. Introduction of a new taxation scheme which will require payment of tax on property or income at fixed rate of 10% through a Voluntary Declaration of Income Scheme. “After payment of such tax, the property shall be deemed legal and no source of such property shall be investigated. Property of those failing to comply with this provision will be subject to confiscation” (para.265a).

12 Radicalise agriculture — without redistribution

Ultimately it is the strong emphasis upon reform in the agricultural sector that remains the pivot of the post-conflict land reform message thus far. No less than five billion rupees is to be expended in 2008-09 on its implementation (Box 24).

‘Building new prosperous Nepal is not possible without radically transforming the agriculture sector which is a source of livelihood for more than two thirds of the population. Therefore, the budget has attached top priority towards radical structural change of the agriculture sector which has so far remained subsistence-oriented and without the modernization that would ultimately achieve the goals of accelerated economic growth and social justice’ (para.B.1).

The private sector and cooperatives are to be conduits of this revolution. Government is the third leg of the stool, as their facilitator –

‘The main philosophical foundation of this budget is to eliminate all forms and remnants of feudalism and establish socialism-oriented industrial capitalism. Therefore … private sector and cooperative sector and public sector will play a role together. Government will play the role of facilitator in the development of the private sector and cooperative sector...’ (para13).

An Investment Board and a Cooperative Board will be formed and fall under the high-level Economic Council (para16). The objective is

‘To increase agricultural productivity through the slogan ‘Cooperatives in every village, food storage in every house’ small farmers will be motivated for farming through cooperative models. Agricultural (cooperative) farming will be encouraged, on the basis of feasibility and without encroachment, utilizing
the community forest, freed Kamaiya area, new afforestation areas, barren land under the electricity transmission lines and public barren lands by organizing the Dalits, socially poor and disadvantaged ethnicities, women, homeless, freed Kamaiyas and landless into Cooperatives’ (para 56).

Several strategies are implicit: from whence land for distribution will derive, the limited target of redistribution and the mechanism through which equity will be achieved.

*Public land* will be the source and local community land in particular, at best in the form of community forests and at worst in the most marginal of lands including under electricity lines. The target will be the poorest of the poor - only. Land ownership will not be affected but production will be radicalised by cooperatives. The target for this is again the poor. Pooling of their small and marginal lands into cooperative production will be their salvation, not the award of sufficient land to each poor farming family to produce autonomously and competitively. Neither redistribution within the skewed private land sector, nor provision of sufficient public land to enable independent family farming, are advocated. It could be concluded that the rhetoric aside, classical redistribution is off the agenda.

**13 Little lands for little people or a realistic approach to land availability?**

How bad this is for the rural poor is open to debate. An argument may be made that the strategy recognises overall shortage of arable land in Nepal and provides the primary property needed – a home. Depending upon where these public land allocations will be located, the ultra poor may be able to pursue multiple income-generating opportunities.

A contrary argument may be made that limiting distribution to the very poor, and giving them unviable holdings out of public land is a token welfare approach (‘little lands for little people’) to problems which need more radical structural change. It fails to tackle landlordism or inequities, and which will continue to fester and deliver unrest and injustice. Forcing poor households to achieve sufficiency by pooling their lands into cooperative production is unrealistic, unlikely to be lasting, and an excuse for avoiding allocation of the necessary resources. Taking these lands out of public domains confirms that the State has little appetite for disturbing current landholding patterns.
14 The more radical approach is left in the hands of civil society

Time will show fairly quickly where the real will on the part of each political party lies towards the founding concern of equitable rights to farmland in the rural community. This will first arise in the process of drafting a new Constitution during 2009.

In the interim the more radical approach is left in the hands of civil society and most specifically of the National Land Rights Forum. The Forum has thus far brought together groups of largely disadvantaged people from 42 districts and in the process laid down a more gritty set of demands (Box 26). This seeks, for example, to confiscate outright any land which has lain uncultivated for more than two years and to hand this land over directly to the landless. Not just registered tenants but the estimated one million unregistered tenants are to be given tenancy rights and those who have tilled for more than three consecutive years, promptly given ownership of a share of the tenanted land. Communities should take control of local redistribution through land councils. Absentee landlordism should be forbidden.

BOX 26

CIVIL SOCIETY POSITIONS ON LAND REFORM 2008

<table>
<thead>
<tr>
<th>Number</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Aim for equal distribution of land by lowering ceiling to 3 bigha (2 ha) with distribution equally to landless and others prevented from having land rights.</td>
</tr>
<tr>
<td>2.</td>
<td>End absentee landlordism.</td>
</tr>
<tr>
<td>3.</td>
<td>Confiscate uncultivated land of more than two years and give to landless</td>
</tr>
<tr>
<td>4.</td>
<td>Create a working high level land commission with mandate to ensure poor and excluded get land rights</td>
</tr>
<tr>
<td>5.</td>
<td>Discard policies and laws which are not tiller-friendly in favour of a new clear pro-tiller policy and law</td>
</tr>
<tr>
<td>6.</td>
<td>Confiscate land from false squatters looking for extra land</td>
</tr>
<tr>
<td>7.</td>
<td>Give tenancy rights to unregistered tenants who tilled for more than 3 consecutive years</td>
</tr>
<tr>
<td>8.</td>
<td>End dual ownership of landlord and tenant</td>
</tr>
<tr>
<td>9.</td>
<td>Convert birta and guthi land to raikar land of poor tillers</td>
</tr>
<tr>
<td>10.</td>
<td>All new land registration affecting landless, freed Kamaiyas, landless squatters and unregistered residents to be in names of both spouses</td>
</tr>
<tr>
<td>11.</td>
<td>Exempt registration fees where registered in women’s name</td>
</tr>
<tr>
<td>12.</td>
<td>Develop cooperative production farming</td>
</tr>
<tr>
<td>13.</td>
<td>Limit use of arable land for non-arable activities</td>
</tr>
<tr>
<td>14.</td>
<td>Streamline land administration into single office and procedure</td>
</tr>
</tbody>
</table>
15. One household one land certificate policy
16. Exempt landless and poor farmers from fees and adopt positive discrimination for employment and access to public services
17. Distribute ID cards to all landless and poor
18. Return land taken for projects and still unused
19. Eliminate all land slave systems such as hailyas, rajantas, birtas, haruwa-charuwas, kamlaris and guarantee residence, land and livelihood to these sectors
20. Compensate those who lost land before the 1964 land act due to restructuring without attention to the poorest.


The Informal Sector Service Centre (INSEC) (operating in 75 districts and coordinating some hundreds of local NGOs) offered these positions in 2007, following a survey in Mid-Western Region –

1. Scientific reform is essential, with a focus on the landless
2. Ceilings should be enforced but flexible to take family size into account
3. Dual ownership of land owners and tenants should be resolved through allowing only those who till to own land
4. A mechanism to limit land fragmentation below a certain size should be devised and enforced
5. Land left fallow for more than three years should be specifically taxed or fined
6. National programmes should be launched to encourage off-farm employment
7. A distinction between farms and homesteads should be drawn with the former only owned by those who till
8. Regulation is needed to enforce sound land use
9. Land administration should be restructured to provide for local level Land Councils including tillers, authorised to regulate land consolidation and equitable distribution and directing the sale of idle land
10. Not enough land will be gained from redistribution of surplus land above ceilings to meet demand; social security measures must be added to discourage non-farming people from holding onto land they do not till or need.


The All Nepal Peasants’ Federation reaches out to several million peasant farms mainly today through some 21 subject specific peasant association organizations (e.g. Poultry Farmers Association, Youth Farmers Association) but deals less with the landless than small farmers. Its positions broadly coincide with those of the landless-focused National Land Rights Forum with current foci upon securing land for the landless and achieving food security in the peasant farming sector.

Source: ANPFa 2008.
II. RISKS, OPPORTUNITIES & CHALLENGES

After half a century of pledges and activity, distribution remains skewed, landlessness abounds and the landlord-tenant relationship remains fraught and exploitative. Only rhetorical commitment to reform has stayed the course. Slowly it has matured into a more wary process of socio-economic transformation which at least recognises that provision of land is *never enough on its own* to turn the majority poor peasants into autonomous farmers and who may successfully compete in the market place. Reform strategy has also become more inclusive of the very poor and disadvantaged. A firmer vision of *the right to land* has emerged, extending the reach of programming beyond tenants and giving a degree of protection to demands on the basis of human rights in agrarian economies.

Nonetheless the agro-economic development vision has settled into dominant place. In the immediate future land to the tiller *will* be pursued, but only to the very poorest, and in such a manner that wider relations are not disturbed. How far this will remain the vision of the upcoming High Level Land Reform Commission remains to be seen.

Assuming that the Commission does intend to seriously remove feudal land relations and associated inequities it does have to consider all the classical instruments towards this including redistribution in the landholding sector. Many risks confront this.

Risks

1. A solid history of failure does not bode well

The most immediate constraint is the reality of failure thus far. Nepal has been unable to deliver equitable farmland distribution over 50 years of proclaimed effort, laws, commissions and programmes. There have been significant inroads into the broader sweep of feudal social and power relations but insignificant change as affecting the core relationship of feudalism, around ownership of the resource and between land owners and those who actually till the land.

2. The need to overcome weak political will with strong public will

Weak political will has wrecked good intentions for decades and still threatens to do so. *Divided* political will is tangible in the resistance of political parties which represent larger land owners. Divisions of this kind are more norm than exception. As concluded in Chapter One it is easier to implement a
redistributive reform under an autocratic system and successes tend to have this condition in common. One way around its absence has been to plan and implement changes with such conviction, speed and determination that the first and most volatile line of resistance is overcome; the short, sharp shock approach. When implementation relies upon multi-party approval of plans, budgets and manpower, then the short, sharp approach may find itself stopped in its tracks. Going the political consensus-seeking route has obvious appeal but achieving this may take years and even then be too lukewarm to pre-empt reversion at the first hurdle.

There is no option but to look to people themselves to demand, shape, implement and monitor pro-poor land reform. The land poor are after all the majority. Logically this should lead to thoroughly localised and devolved approaches to capture and build upon popular will. An added advantage is the strength which local ownership of the process gives to reform, making it less vulnerable to derailment with change in governments.

3 Keeping land reform as part of a common minimum programme

In the meantime the leadership appears to have done its best to prevent land reform becoming a political football among Parties. The administration has ensured that commitment to equitable reform is rooted in the Constitution and the Common Minimum Programme in language which is difficult to challenge (‘the abolition of feudalism’). Securing buy-in into its overarching vision of agricultural growth has also been an important achievement. Compromises have already clearly been made and will continue to be made, including in the hands of the multi-party High Level Land Reform Commission. Moving beyond rhetoric and generalities into hard core strategies is now the challenge – should the leadership genuinely want to see redistribution.

4 Dithering doesn’t help - but neither do empty promises

As each month passes without a comprehensive plan of action for land reform, discontent may be expected to rise. Building pressure is seen in continuing land invasions. At the time of writing (November 2008) estimated 16% of all Community Forests have been invaded by landless or land poor. Usually the settlement is planned and orderly in the way huts are built and where, aiming to cause minimal disturbance to the forested area. Often there is support from within the community affected suggesting solidarity among peasants that landless families should be granted permanent plots of their own. Too much delay in acting upon promises may encourage further occupations and more
complex situations to unravel. Too much delay may also lower confidence that reform is going to take place after all.

As shown earlier, land invasions or ‘encroachments’ are not new in Nepal. Government’s own policy of land colonization in the Tarai triggered this trend, and became prominent in the 1960s and 1970s as formal resettlement schemes were devised. Then, as now, squatter settlements were purposely on public land, not private farms, forcing government to act. New constitutional and political commitment to ‘provide security including land to the landless, squatters, bonded labourers, tillers, Harawa-Charawa as well as the economically and socially backward classes’ (Art. 33, Interim Constitution) serves today as ample invitation for revival of ‘spontaneous settlements’.

The urgency to come up with a clear plan of action for providing land to the landless and extreme land poor is pressing. Without this the last year or two bespeaks uncertainty. It also wastes what will turn out to be a limited window of opportunity for change, in the climate of open-mindedness and willingness to support change which characterises early post-conflict periods, but which comes all too quickly to an end, business as usual taking over.

5 No magic solutions

A clear lesson from reformism globally is that it remains subject to debate as a strategy of capitalist transformation. Donors, as supporting purse-holders, have their own preferences as to ways forward and as to areas they individually wish to promote, often skewing directions and achievement. Although the balance of experience is favourable after a century of trial and error, there is still no guarantee that equitable farm distribution will deliver growth. It is certainly now accepted that equitable landholding is unable to do this on its own. New land owners need significant financial and technical support to sustain farming, get out of debt and to increase production. Promoting growth with equity is never an easy course.

Opportunities

1 A lot has been learned

Long experience of shortfalls in political promise and toothless law must make Nepalese more wary as to promise and more demanding of delivery. Failures themselves have kick-started popular awareness and helped to clarify demand. The tragedy of civil war discourages tolerance of violence as a means to achieve ends. Although achievements in reform have been few, they have had an impact;
action around the rights of Haliya/Haruwa at this time have most likely been encouraged by the resettlement and rehabilitation of 12,000 freed Kamaiya, crystallising a more critical perspective on their own oppressive conditions which they may not have dared advance in the past.

2 Readiness to reform exists

The political environment has changed sufficiently for social transformation to be more structurally (or ‘scientifically’) addressed. Land owners themselves anticipate changes (lowering of ceiling, changes in tenancy regulation, etc.) and many are likely poised to finally remove their land capital into off-farm enterprise. Landless and near-landless tillers have begun to find their voice.

3 Positive institutional conditions exist for seeing reform through

The fact that the new parliament (constituent assembly) is for the first time a genuinely inclusive body, with representatives from the very sectors of disadvantage which have been excluded in the past bodes well for a positive hearing for land reform proposals, which the Land Reform Commission will in due course submit for its scrutiny.

The level of local organisation among peasants rises annually; in any one community there must be now a number of routes through which grievances may be channelled and needs articulated. There are no less than 22,000 registered NGOs in the country and it is well known that over half of all households are involved in at least one civil society organisation. Government itself is now well adjusted to the benefits of partnership with civil society in such matters.

4 Local government reform holds out promise for a democratic approach

Beginning in the 1990s, this has yet to see delivery in genuinely strengthened VDCs and enabled with the full range of governance powers currently enjoyed by district and central government. Post-conflict conditions suggest the time is ripe for this to progress. The commitment to devolutionary governance overall is underway through commitments to a federal state, and whichever way federalism eventually manifests, will again need to look to community levels as the grassroots platform of governance.

VDC organisation is currently erratic and constrained by uncertainty as to their future formation and the way in which multi-party government at the grassroots will be managed. Many VDCs are weak and more like arms of district offices than autonomous self-driven governments of the community by the
community. Improvements are nonetheless reported. Application of the 1999 local government law stands poised to occur at scale, and endowing significant new powers on these community bodies. While the ultimate shape of VDCs is uncertain, it is not uncertain that the majority of community members want to see this empowerment occur. Such conditions bode well for a proactive and more participatory and therefore effective era of land reform.

Challenges

A host of challenges face the promised High Level Land Commission. These range from founding questions of strategy to more practical issues of enforcement. Few are not complex, as the following selection of questions around strategy illustrate.

1. To abandon or not abandon equity in farm distribution, and if not, then how far must ceilings be lowered to achieve this?

Setting aside the overriding political constraint to redistribution which may be posed by political parties actively supporting the status quo, considerations might include the fact that the cultivable land resource in Nepal is already limited (if forestland is excluded) and that for as long as population grows, assurance of sufficient arable land to all who need it may be impossible within a generation or two.

This is already difficult; provision of above-marginal holdings of 0.5 ha may only be achieved by lowering the ceiling from its 7.3 ha level for the Tarai and 3.75 ha level for the hills and mountains. If it is recalled that there are roughly one million rural households who have no arable land of their own, then providing these people with 0.5 ha requires half a million ha of cultivable land. This rises to one million ha with the addition of those who have some land but well under 0.5 ha (conservatively estimated at 800,000 hh). To find one million ha from the ‘actually cultivated land area’ (which amounts to 3,424,994 ha at this time) means lowering the ceiling to an average of 1 ha. However, if the total private land holding estate of 6 million ha is taken as guide, then the ceiling need only be lowered to an average of 2 ha per holder – although this includes a substantial area of land considered uncultivable.

49 Including a rise in the number of VDCs who now have a full time working secretary: up from 32% in 2006 to 51% in 2008 (OCHA 2008).

50 81% of people surveyed in 2007 in 66 districts (4,000 sample) think VDCs should be given most power than in the past (NDI et al. 2007).

51 For example if the estimated 98,000 households with more than 3 ha at this point were to lose land above that level this would yield only 167,388 ha, on the basis of NASC 2001 figures. A ceiling of 2 ha would yield around 320,000 ha.
The total cultivable land resource of Nepal is in fact routinely estimated as around 20% of the total country area at 3,179,000 ha – already exceeded. This excludes forests and woodlands and related un-wooded areas. Regulated farm development in fully degraded or un-wooded forest zones might be viably considered; anathema to the forestry sector, but which could deliver marginal areas without risking soil or water conservation of forest conservation requirements.

The level of farmland need even in the next generation is difficult to predict. Nepalese society is already rapidly urbanising and a large number actively seek work beyond the farm. Real decline in rural populations affects most successful post-land reform economies such as Japan, Taiwan, Vietnam and South Korea. Still, Nepal’s productive land base is so small that it will likely never be enough. There may be strong grounds for promoting the emergent homesteading strategy (provisioning the most poor with house/garden plots) but necessarily near to urban areas. Intensification also offers potentials which planned massive investment in agriculture is designed to facilitate.

At the same time homesteading does not tackle the grave issues surrounding landlordism or the inequities and frustrations experienced by the majority of farmers who do not have enough land – and while quite large and often idle or under-utilised holdings continue to exist.

2 What future for traditional tenancy, currently neither abolished nor regulated?

Should ceilings be lowered and should promised aid with credit and cooperative support (to enable for example shared plough power) be successfully delivered, then it might be possible that rural Nepal evolve as a body of independent smallholders, each farming only his own land. The need for sharecropping arrangements, the backbone of tenancy, would decline.

Even in this positive scenario, the short term reality is more likely to see tenancy continue and equity rest principally on the valuation of labour inputs towards a fairer return/proportion of the crop. Revived attention to tenancy conditions is urgent and inescapable. What is most missing in achieving this is legal empowerment at the community level for monitoring and enforcing fair conditions (see later).

3 Who to compensate and how?

The issue of compensation has become more complex with a large number of conflict-displaced persons demanding restitution of their homes or lands,
alternate lands in lieu or other compensation. In mid-2008 registered internally displaced persons numbered 35,000 but with an estimated 50,000 to 70,000 people still displaced. How many of these wish to return to their homes is another matter; not least because their flight often coincided with the desire for a better or differently sourced income, eventually found in the new location. Examples of this abound in towns and also in continuing Hill to Tarai migration, displaced moving to farm there or to be nearer seasonal labour markets in India. It will take time for the situation to settle and security seen to exist before a rational assessment of if and how those who left because of conflict should in fact be compensated for their losses. The sale of their lands to others may take some of the pressure off this. In many cases many of the concerned properties, particularly of poorer farmers in the hills, may in due course be more correctly held to be abandoned and/or their owners absentee.

Public prominence has been given to the many fewer cases where large landlords were forcibly evicted by usually Maoist militias and their lands redistributed to (mainly) tenants and former bonded labourers. The estimates of landlords affected continue to rise, without any official enumeration of these. In Dang District, officials record that 57 landlords had their land seized by mainly Maoist militias during the conflict and seen these lands redistributed to tenants. This represents 0.058% of the 97,723 registered landholders. As Dang was a main site of Maoist land capture (public and private) and only around half the districts were affected, the overall level of private land capture in Nepal was possibly quite small, around 2,000 cases overall. However, other estimates place the total number of evicted landlords as triple or more this number. Often there was some fee-taking on the part on the militias as well as violence occurring.

The temperature around the issue has been heightened by the worthy concern of humanitarian agencies but which tend to observe the issue in isolation from the social and reformist context as to the distribution of rural lands. More exploration is needed as to how many of these land takings remain taken, as even in the case of evicted landlords interviewed by this study in Dang, three of five were in fact able to access their farms again if they wished, but preferred not to, as they feared returning to those villages. They were also clearly hanging out for cash compensation.

The issues of restitution are always complex. In most post-conflict states it is necessary to draw a distinction between lands and houses which are taken by incumbent conflict administrations and militias and properties which have been ‘regained’ through the process of war. In Afghanistan for example, many non-Pashtun communities have regained control over pasturelands which they
believe were wrongfully and forcefully taken from them decades past. Following the civil war and the end of the Taliban regime, whole tribes have refused to return these lands to ‘Pashtun colonisers’. Resolution is slowly emerging in new policies and draft laws which indeed acknowledge that these local populations held prior rights to these lands which Pashtun-led governments of the last century have abused.\footnote{Alden Wily 2003, 2008d.} Return accordingly has to be negotiated, no longer assumed as a right.

In the case of Nepal this has echoes in relation to the indigenous land rights issues and especially the status of customary land tenure regimes and rights in law. More immediately it has echoes in consideration of what is legal and legitimate and the narrow line between them. Land reform law still actively exists and lays down a set of principles and practices which for example, support the removal of land which is above the stipulated permitted area, outlaw bonded labour and regulate crop shares.

What is most illegal in such cases is the taking of law into one’s own hands and causing damage and violence. A widely publicised example of the narrow line was seen in the political debacle over the occupation of a private property in Siraha district by landless people during September 2008 over which two Ministers adopted very different stances, one asserting that the occupation was illegal, the other that such occupations were in line with the policy of abolishing feudalism and disrobing large land owners of their lands wrongfully held or acquired (Kathmandu Post, September 18 2008).

Compensation for injury and damage caused to property is one immediate and fair consideration. In other respects these cases are more complex. Developing a clear strategy on restitution is critical, but necessarily coordinated with intentions as to land distribution policy. For example, as long as the property falls above legally entrenched ceilings, compensation might not need to be paid, as the surplus was illegally held. It also seems reasonable to fully investigate the tenant and labour history of the property before deciding on full open market value compensation for the land; for example, there are likely to be cases where the land should have been subject to partition had the landlord facilitated rather than avoided the registration of his longstanding tenants or bonded labourers. It might also be considered unjust to permit the landlord who does not wish to return to his holding to sell his land on the open market, should tenants and (especially bonded) labourers be affected. This will keep these properties circulating among the better-off.
There is additionally the matter of just how much compensation and in which form the evicted landlord (or other landlords whose land is required for redistribution purposes) should be paid. The Interim Constitution is careful not to commit government on this beyond the principle that compensation will be made. Despite plans in 1963, Nepal has not yet managed to devise a system of compensation for compulsorily acquired land which is both below the market value and in bonds which forces the recipient to invest in enterprise development.

Just how the beneficiaries of redistribution may be expected to pay their share towards costs also needs thought. Cases abound in other states where beneficiaries have become so indebted that they are unable to hold onto redistributed parcels. Too hasty payment of compensation to conflict-generated displacement could on all these counts establish contradictory precedents and give rise to a new set of conflicts. These complexities may explain delay in delivering on the ‘repeated assurances by the Maoist Party and the Prime Minister that lands captured during the 10 year conflict will be returned to their owners’ (The Kathmandu Post, 9 September 2008).

Nonetheless, delay is hardly conducive to confidence or acceptable. Finding resolve on seized lands is not just an obligation of the Peace Accord and Constitution, but urgent for peace and consensus around land reform. The issue already shows signs of becoming a political football among political parties.

4 Idle lands: is taxation enough?

The current focus upon idle lands is long overdue. Although not backed up with hard data, the consensus in rural Nepal is that a great deal of land lies purposely idle, far beyond those farms which have been fully or temporarily abandoned as a result of conflict or migration.

As described above, the strategy for this fiscal year at least is to push this so-called fallow land into the market place by taxing farmers high enough to force them to sell. Or to force them to hire workers for the land, or to place tenants on the land.

How far taxes will impact upon the many income-earning absentee landlords in town is open to question. Land values are such that it may be expedient to hang on to the land, idle or not. Query must also be raised again as to the appropriateness of facilitating sale in a land scarce peasant economy, removing yet more land beyond the reach of the majority land poor.
At worst, a ‘tax not confiscate’ strategy may just offer yet another route through which recalcitrant landlords are liberated from due responsibilities, to farm, or to put the land under tenants. This could also be the case where sale due to taxation runs counter to the interests of evicted bonded labourers, longstanding workers or tenants who may have justified claim to those lands, now suspended due to the landlord’s cessation of cultivation. Many will be unregistered tenants. Sale of those lands on which they may have laboured for a generation or more places those properties beyond their reach once and for all.

Outright confiscation of all idle lands may have more appeal. There will be many ways through which absentee landlords try to avoid this, such as claiming the land is idle because of conflict, illness, working abroad to earn the money to invest in the farm, or the land is idle pending dispute – but what the landlord cannot claim is that there is a lack of labour availability (at least not outside the mountain areas). Whatever the Land Commission decides it will need to make its compensation strategy consistent with its recommended land distribution and tenancy reform strategy as well as strategy to pre-empt speculative hoarding.

5 Is it time to widen the target of land reform beyond the farm?
There are two dimensions to this issue; extending reformism into the urban sector and looking at so-called public lands, most of which are in fact Government Lands being forested.

On the former little will be said other than it is essential to bring urban planning and urban land and housing distribution into the picture. Cities and towns are always subject to housing development related acquisition and speculation, and this is routinely at the cost of the rights of urban and peri-urban poor. Conflicts make this worse. Urban land values soar, housing and office development becomes a major industry, and speculation becomes rife, as ‘big men’ buy up little parcels for speculative purposes. The fact that such a high proportion of current owners are in fact unregistered, in terms of entitlement, adds to vulnerability of the poor.

Sanctions against this seem limited to non-existent. The sharp rise in size and numbers of de facto or recognised municipalities does not seem to be being met with planning which assures sufficient room for low-cost self-help or public housing. Protection of peri-urban VDCs from rapacious developers is a priority.
6 How far are public lands part of the solution or part of the problem?

Many rural poor have voted with their feet by occupying public/government lands especially in road reserves and peri-urban forested or other spaces or community forest areas, to reinforce their demand for permanent land provision. The indications are that Government will respond positively in allocating marginal plots to them.

This is but the tip of the iceberg of a larger issue as to how far the rigid distinction between public/government and private land is legitimately retained at this point in time. The primary focus of discussion must be those Government Lands better defined as community property. This includes many thousands of hectares within and adjacent VDC settlements which the state co-opted during the Panchayat period but which remain more properly the assets of those communities. While Community Forests are created on these lands, and VDCs are empowered to regulate the use of riverbed and other in-village lands, registration of these lands as the property of communities is remote and requires central government permission, even to release these for lease. Even some of the smallest and most marginal of lands are government property even though these were the lands of the very poor but whose occupancy of sometimes generations has not been registered for various reasons listed in Chapter Two.

The public land estate is now held tightly by central government on grounds that the State is alone the rightful possessor and guardian of these assets and much of it is by definition Government Land. Even though not endowing ownership, the community forestry movement has amply demonstrated that communities are well able to protect areas which are most viable as retained forested lands. There is also the question of land rights, as to whether the state is rightfully now the possessor of these collective properties.

Questions which the High Level Land Commission might need to address in this regard are:

(i) whether it is timely to democratise the expansive holding of the state in land, and in particular bring relevant local public domains under the direct tenure and jurisdiction of respective VDCs, albeit subject to overriding state regulation where these are forested or requiring soil and conservation management;

(ii) related, to consider how appropriate or necessary it now is for the state to be the majority owner of valuable productive land assets, and
to an extent which reaches far beyond the demands of public service provision; and

(iii) to consider how far the existing tenure norms need revision and expansion, given that as currently structured they are so individual-centric entitlements and largely limited to cultivable lands.

7 Customary rights and federalism: does land reform need to explore the link?

Two other demands make attention to the above more urgent; first, the need to pay more attention to the communal property rights of indigenous communities where these are still operational and try to operate despite the hostile legal and land governance environment. Grievance as to the way in which Kipat was summarily abolished in the 1960s also begins to rise. An indigenous land rights movement is emergent. This is boosted by Nepal’s recent accession to ILO Convention 69. The Convention, to which Nepal has now legally bound itself, supports the claim of indigenous ethnicities that where still feasible, their traditional individual and collective rights over land need to be respected. Specifically, Articles 13.1, 14.1, 15.2 and 17.1 require protection of the property rights of indigenous peoples, both individual and collective.

The surge in federalist demand is related to land grievances. These differ from grievance around inter-caste and class inequities in rights over productive farmland in that they are more territorially based, reflecting the norms of customary tenure in which a community holds collective dominion over a known and bounded territory. Within this domain house and farming lands are routinely individualised but naturally collective lands like forests and pastures are traditionally as routinely retained as the shared property of all members of the local community.

In reaching decisions about the shape of federated New Nepal, these notions of territoruality and land right come into play. Thoughtful address of land tenure concerns will help clarify viable patterns of federal entities. For example, it might prove ultimately most satisfying to all to award all VDCs or like community socio-spatial entities with full collective rights over local communal lands, leaving as little land as possible beyond their realm. The size and shape of many VDC areas would in the process need amendment to fully embrace the original community land area and taking into account the domains of indigenous groups, from which the current community is partially or fully constituted. Clustering of VDCs into larger units but along lines which are consistent with the wider territory of the particular dominant ethnicity may also be necessary. Too rigorous pursuit of these criteria along ethnic lines
cannot be workable in many areas where populations are so thoroughly mixed today. However it can in most cases be one of the considerations in bringing the entire land area of Nepal under localised jurisdiction, and removing the odious division between private and Government Lands, where much of the latter is in fact more correctly modern community property.

By assuring rural Nepalese not just farmland rights but collective ownership of assets traditional to that area, grievances driving forms of separatism because of failure to acknowledge communal property rights, can be at least partly resolved. Experience with customary land reforms around the world suggest that most indigenous communities whose properties are now occupied by other non-indigenous persons as well as themselves, generally accept their inclusion in the newly-reshaped notion of community, so long as local rights to the communal assets are restored. Ensuring that these rights are located at the most local level possible (that is, at village rather than ethnicity level) has been a major strategic success, and usually amply reflects customary norms, in which an indigenous territory is a composite of village based domains, held by communities which share socio-cultural identity.

As observed in Chapter One, the issue of customary/indigenous land rights is much less an issue between socio-cultural groups than between government and people and how the former and state law treats traditional systems of land ownership and distribution and regulation of rights. Mainly the issue is about public lands. It is the status of public lands that most alters with a tenure reform approach which recognises that customary regimes of ownership have a role to play in land relations in even the most modern of agrarian states. The point being made here is that even where inter-ethnic dispute over lands has arisen, resolution is less found in the inter-ethnic relationship (or caste versus ethnicity relations) than in how rights to land are legally and socio-spatially treated and local communal rights to land recognised as a property right.

8 Does the forestry sector have a role to play in land reform?

Four issues have been overlaid upon each other in the above paragraphs: the status of collective rights to land, the status of indigenous/customary tenure systems and rights, the territoriality issues which underwrite federalism, and the status of public land. A fifth issue is integral; forest tenure.

Forests and woodlands are the largest public land resource in Nepal, and for which a flourished forest administration is in place. Legally, they are

53 Alden Wily 2008b and 2008d.
Government Lands. The sector has made enormous strides in devolving managerial responsibility and use rights over around one fifth of this public/Government estate.

Carrying this further into real legal custodianship allowing communities to be recognised as the owners of forested lands linked to community areas is a logical trend, and one which forest governance globally is steadily shifting towards as recorded in Chapter One. The reason is simple: that recognition of tenure and not just use and management rights provides local users and their communities with the ultimate incentive for self-regulated conservation. It also frequently removes conflict between state and people precisely because land rights (not forest use rights) have not been met, and which later, if not sooner, drive purposive encroachment and degradation.54

An argument is sometimes heard in Nepal that communities already have so much power under the FUG paradigm that securing ownership of the forest will hardly make a difference. The problem with this argument is that it over-estimates the power they do have (in reality quite limited in respect of timber rights and royalties) and assumes stable paradigms over the long term. It is also a fact that the significant success of the internationally-backed community forestry movement in Nepal, helps keep founding issues of rightful land tenure at bay.

One of the major problems around the construction of Community Forests at this time is that having been constituted with use rights rather than land rights in mind, it is often the case (especially in the Tarai) that neither the nature of the Forest User Group (FUG) nor the dominion of the Community Forest (CF) fit well with underlying community land tenure rights and areas. In some cases, neither the inclusive interests of the social community as it exists today, nor those elements of it which conceive of the forest as customarily indigenous property, match with the area which has been released as a Community Forest.

An important task of land reform will therefore be to explore with the forestry sector as to how the FUG and the boundaries of CF may be restructured to better accord with the natural socio-spatial boundaries of communities and, as relevant, with the rights of indigenous nationalities considered. It could well be the case that if this pool of issues is resolved, many of the tensions between indigenous and non-indigenous land claims can be resolved.

III. PUTTING REFORM ON THE RIGHT PATH

Shortfalls in Nepal’s land reform thus far are testimony to the need for adequate financial and manpower investment to see policies and legal pledges into delivery. It is not for nothing that Japan put 400,000 people to work on this for three to five years to achieve its highly successful reform. This is expensive and beyond the means of Nepal.

A related need may point the way forward. For another critical ingredient to successful reform is strong public will and participation in planning and execution. This was even necessary in land reforms which were backed by military force. Public participation and ownership of the process is essential in democratic environments. The need for this rises when political will is fragile or likely to change with the government of the day. Today, the popular rooting of a land reform is mainly developed through civil society organisation and populist peasant and land rights movements, and which have generated their own global coalition of support.

1 The need and opportunity to adopt community based land reform

However, it is suggested that a much more widely-based institutional opportunity exists in Nepal. This is in the VDC framework at rural community level, each comprising a discrete village development area and with an elected governing council. All aspects of land reform and some of the sister agricultural sector reform may be greatly facilitated through devolution of land authority with accountability to these grassroots units and provision of direct support to these accordingly. In short, movement towards a community based approach to land reform is advocated. Even without political and manpower constraints this offers a developmentally sound way forward.

VDCs are already set on a course of increased legal empowerment as governance institutions, including powers to collect land tax, already applied in most areas. They also are set to have substantial powers in land dispute resolution. It may be safely assumed that irrespective of what decisions are made in regard to the formation of federal entities this grassroots institution will remain. Such bodies offer enormous advantages which centralised authority over land reform has been unable to achieve.

2 Getting the information base right

In the first instance, communities and their VDC offer the richest, most complete and most accurate source of knowledge about land relations at the local level.
This suggests that it is such bodies which should be legally responsible and bound to produce a complete, up-to-date and accurate record of the land holding area, ownership status and tenancy history and status of each and every member household, absenteeism, exactly which parcels remain uncultivated and why, the relationships among owners and even where each owner is believed to hold other parcels outside the immediate VDC area.

There is no reason why the VDC should not be bound to produce such records and be able to compare this on-the-ground reality with owners and holdings as listed under the register, copies they now already hold for the purposes of tax collection. *Inter alia*, unregistered but longstanding occupancy will at once be clear, along with the current scope of public land within the village area, the extent of landlessness and land poverty among member villagers, the realities of distribution of ownership, the scope for redistribution, the extent of idle lands and the condition and rights of tenants and bonded labourers.

The current knowledge base is inconsistent, incomplete and inaccurate on many as yet unmeasured accounts. Distribution data of holdings is known to be deceptive in its exclusion of landless, registers inaccurate in their known exclusion of unregistered owners and the information base outdated and inaccurate given that land concealment has been rife. Over-confidence in these existing district records helps legitimise unfair, incorrectly recorded or fraudulent land acquisitions and transfers, and entrench exclusion of those poor who were unable to secure title for their plots.

3 A national community based accounting of land holding and relations

A logical route to overcome this is to launch nationwide community-based identification of tenure and labour status of every household in the community by the community. The exercise would need to be implemented under rigorously constructed and tested guidelines. Results would best be subject to autonomous district team monitoring for accuracy, clarity and comprehensiveness. A risk is that in the hurry to computerise registration data as it currently stands (a major objective of the current fiscal year), such opportunity will be foregone and an unjust and flawed picture of land holding will become the legal orthodoxy, and prevented from challenge.

A community based approach to information collation and certification dovetails well with the sister challenge of sound delivery; to bring the beneficiary sector fully into participation as decision-makers, implementers and monitors. Building implementation around a system which looks to the community level (specifically VDCs) may reduce costs over the longer term.
Providing inclusiveness is made workable and requiring strictly majority voting on decisions, it may also help overcome divisive party alignments which reach right to the ward level.

4 Empowering VDCs to define and implement their own reforms

There is also no reason why the VDC should not be empowered to draw up its own plan of action for redistribution, to ensure secure access to minimal land for landless or extreme land poor village members. This would include the power to deal with abusive tenancy, ensure idle lands are farmed, and supervise the redistribution within the community of above-ceiling lands, the ceiling to be set by the community itself. The status and use of public lands with the community and the regularisation of longstanding occupancy by unregistered households would also be required. It also empowers the community to ensure that communal lands are not encroached or settled without community consensus, and their long term conservation and utilisation planned.

Once its plan is devised the VDC would present this systematically to the entire village assembly on a ward or all-village basis as practical, for discussion and majority approval.

Accompanying this should be draft community by-laws for community debate and approval. An implementation committee would advisedly be established by each VDC to ensure agreed proposals are implemented and a standing land council to be responsible for sustained adherence to agreed rules.

In these and other aspects the community would be subject to overriding principles, limitations and guidance by national (or in due course, federal) regulation. These would include the process through which decisions and actions of communities are exercised to ensure genuine majority will. Mechanisms would be laid out for ensuring that the poorest households are included, necessary where poorer peasants have remained vulnerable to the power-holding of larger land owners and often allied officialdom. A community based approach also has a better chance than top-down strategies of ensuring the direct participation of a crucial constituency in Nepal’s transformation, its youth. The community would also be subject to periodic on the ground inspection and oversight by autonomous district teams, and able to recommend and expect speedy implementation of remedies, as also guided by national/ federal law. The already existing powers of VDC to mediate disputes would be practically activated, as to the referral and appeal procedure.
A devolved approach is generally also essential to avoid slippage into old ways after an initial flurry of activity, often the fate of bureaucratically-controlled reforms. It is doubly useful where consensus among political parties as to land rights is remote. While the national level bickers, local communities may get on with addressing their land constraints themselves and reach agreements which may be impossible on the national stage. A devolved approach also allows land and labour reform to be underwritten with the popular ownership needed for these to eventuate on the ground and to be rooted and enforced. Community based land reform and administration also allows needed flexibility at the localised level. A devolutionary approach also enables experiential learning and incremental learning. The failure of one community need not necessarily adversely impact upon its neighbours; conversely, the success of one community may trigger demand in the next.

While national administrations classically fear releasing real power to the periphery it is precisely this form of democratisation that is necessary to ensure mobilisation, real inclusion of the majority poor and to allow genuine observance of practice (monitoring) to be sustained.

Of course many queries arise and which require technical guidance. The first is back-up institutional capacity. VDCs today have one low level (non-gazetted Class II) official as provided by the Ministry of Local Development. While this official works to the elected village council, it would be naïve not to recognize the power this official holds, or that he is already overburdened, performing diverse functions.

Upgrading the capacity of this cadre, or better still, providing each of the estimated 4,000 VDCs with one extra dedicated administrative secretary for the purpose of seeing through land reform would be needed. It is this kind of investment which would make all the difference to success or failure this time around. Such a cadre would be the focus of training to ensure national law and guidelines providing the overarching principles and processes within which each VDC may operate, are well understood by VDCs or the sub-committees they appoint to plan, implement and enforce reforms.

5 Moving towards community based land administration

The cadre may also provide the stepping stone to the performance of the VDC over the longer term as a legally empowered Community Land Board. This would be mandated to regulate and administer land relations within the community and community land area. Thus, community based land reform would evolve incrementally into standing community based land administration, each
community adhering to its own defined land regulation (by laws) and holding its own community land register and associated records. Whatever transpires, a community land council or community land board requires the services of an administrative secretary, drawn from the community or otherwise.

Many intractable problems facing state-led centralised reform could be overcome through this devolved approach. These range from difficulties with enforcement, which communities are in a much better position to see through, to handling of idle lands and the fate of properties owned by absentee landlords. These may be resolved on a case by case basis in the hands of communities themselves. Whether this body is integral to or autonomous of the elected VDC would be a matter to be addressed in due course.

Establishment of a community based approach to land reform and administration alters the role and powers of district level offices logically streamlined towards technical advisory, supervisory and monitoring functions. A major part of the currently substantial manpower and resources focused in these bodies may be redirected to community levels.

Whether New Nepal and most immediately, the planned Land Reform Commission can rise to the challenges of delivering a new, more comprehensive and democratic land reform plan remains to be seen.

The chances at this point are mixed. Old ways of examining problems die hard, including as to what land reform is and can be. International precedents for a community based approach to land reform, land administration and governance are also new, or without the redistributive element so crucial to Nepal. Just at the point when devolution is acknowledged in Nepal as essential, its eyes are focused around federal state levels rather than the grassroots. The rhetoric of inclusion and democracy aside, the competitive vibrancy of party politics and in which each party is so strongly built along vertical lines, encourages a centrifugal centralism, undermining opportunities for members of communities to reach and sustain consensual decisions. Many key actors within officialdom and beyond remain as resistant as in the past to the alteration in comfortable if unproductive ownership arrangements, and in which they are the dominant absent players at the local level.

Thus, much is stacked against a revolutionary land reform genuinely occurring, and particularly one which genuinely looks to new approaches to meet old objectives. It is just as easy at the point for New Nepal to tiredly reiterate the
platiitudes and plans of the past but ultimately to proceed as before, achieving little.

6 Ways in which international community can assist

There are obvious ways in which the international community can usefully assist New Nepal in the planning of viable land reform and without unduly influencing its choice of strategies.

The first is to afford the High Level Land Commission with every assistance to do its job well. While government will likely cover its administrative costs, more resources may be needed to enable the Commission to operate in a devolved manner, such as sitting in each of the regions and agro-economic zones to hear local views, or even deciding to restructure their mission as a mountain, hills and Tarai land reform commission. Assistance is also likely needed to enable the Commissioners to see innovative tenure developments for themselves and the routes and outcomes of the more successful redistributive reforms. Opportunities to hear from a full range of experts from such countries will be helpful, probably through the holding of an international land reform conference.

A second opportunity is to ensure that the Constituent Assembly responsible for drafting the new Constitution is afforded the knowledge it needs in order to make informed decisions about what could and should be considered for inclusion on the subject of land rights and reform.

Perhaps the most valuable immediate assistance which donors can give New Nepal is to assist the High Level Land Reform Commission and associated actors to explore the workability of the community based land reform approach outlined above. Carefully selected learning by doing experiences in all regions and zones need to be promptly planned and implemented, providing hands-on exercises of working through the processes and parameters. This information should be invaluable to the Commission in determining the processes of land reform.

Other information gaps around land reform in Nepal are myriad. These additional exploratory hands-on studies are identified as the most urgent and most useful to the policy-making land reform process on which the High Level Land Commission must shortly embark.

(i) A field and desk review seeking to answer to what extent does commercialisation of agriculture require large scale farms/estates,
or can even very small farmers become commercial producers? This could be implemented by collecting evidence from both rural Nepal and India (which has useful real cases in several States) as to just how far small farmers are able to take up commercial production and identification of requirements for this to occur;

(ii) A field assessment as to whether a homestead land provision strategy (2-4 kattha per household) in peri-urban areas can meet the needs of the landless and very land poor at scale, at the same time as bridging the rural-urban transition and providing a foundation for multi-sourced income generation. The assessment could also determine how far the rapidly growing urban centres in especially the Tarai able to provide for this; what is needed to ensure they set aside or acquire the necessary land to meet this demand; and

A review with indigenous nationalities of exactly where their territorial and land based ambitions lie, with a focus in particular on identifying those areas where customary collective tenure still exists, albeit subject to designation of those areas as national or public land. This review would also need to work with representative nationality leaders to explore the kind of adjustments that would need to be made to secure customary rights, as affecting notions of public land, government land, the ownership of protected areas and community lands.
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ANNEX A

A SNAPSHOT OF SELECTED REDISTRIBUTIVE REFORMS

Liz Alden Wily, September 2008

Bangladesh

Land reform began in the 1950s along with India. Ceilings were introduced in 1971 but kept high (13 ha) and not enforced. More recently there has been a ban on sale of lands by those wishing to conceal large holdings. Little surplus land above the ceiling has been recovered and those that were redistributed have been subject to payment of bribes and well as legal charges and accordingly not available to the landless or poor. Landlessness has actually increased threefold in the last 40 years and correlates with poverty indices. Between 1988 and 2005 landlessness (less than 0.2 ha and including 2.1 million absolute landless) rose to 52.14% or eleven of 14 million farming households. Rahman and Manprasert, 2006 argue that this has at least reduced fragmentation of farms and increased mechanization. More cynically, they point out that the landless movement is so vibrant and organized that it generates significant incomes and income-generating projects through a burgeoning and internationally-supported NGOs sector.

Pakistan

Little reform has been planned or implemented until now in Pakistan. Over half the rural population (54.55%) is landless. Tenant based farming is dominant with 67% of households being tenants and with same amount of land (67.5%) under tenancy contracts. Shares are seriously inequitable, tenant sharecroppers receiving one quarter to one third of the crop only. 38% of the population is below the poverty line and the Gini Coefficient is 0.6 (Answar et al. 2003).

Thailand

A tenancy reform was begun in 1975 but by 1978 was abandoned in favour of focusing upon settlements of encroachers on public lands. This continued, with a new policy introduced in 1993 but directly perverted by speculators. In 1998 the Government was forced to revoke the titles of 786 rich farmers. Other beneficiaries have been middle to small owners, with no landless or real poor included. The World Bank’s land bank policy (willing buyer willing seller) has been fairly successful in parts of Thailand, addressing middle farmer land needs. Titling programmes have been slowly underway for 25 or more years, producing around 8.7 million titled holdings.

India

India is a critical case of land reform as it has most of the world’s poor and landless. Formalization
and encouragement of feudal inequities is generally laid at the door of British policies, first developed in West Bengal and Bihar in 1792-93, turning intermediary tax collecting officials into land owners and limiting the rights of their tiller. This zamindari regime was adopted and modified throughout British India, embedding tenancy and sub-tenancy systems. In 1953 90% of arable land was under tenants and over half the land area was owned by a mere 7% of owners.

Reform began after Independence and the abolition of the intermediary regime was complete by 1960. However in many states they acquired the lands they controlled even if they had not cultivated these themselves. Ceiling and tenancy reform began in most states between 1955 and 1972 with national guidelines introduced in 1972. The former were lax and the latter ill-timed with the result that millions of tenants were evicted (up to 33% of arable lands lost tenants) or persuaded to relinquish their tenancy rights. Millions more were impeded from accessing land through tenancy.

Ample opportunity was afforded for concealing large holdings. Until today many farms are left fallow rather than formally leased out. Or tenants are rotated annually and/or to selected persons unlikely to claim tenancy rights.

Nonetheless nearly 10 million ha have been redistributed including 2.5 million ha of ceiling surplus land and 7.3 million under tenancy reforms transferring ownership to tenants. This represents 5.4% of rural lands handed over to 5.3% of the agricultural population (cf. Taiwan where 33.3% of the land area was distributed to 62.5% of the agricultural population). Ceilings are agreed to have placed a cap on the largest holdings and prevented their re-emergence since. Fragmentation has also declined from 5.7 parcels in 1962 to an average of two parcels per holding in 1992. By the end of 2002 12.4 million tenants on 15.6 million acres of land were said by the Indian Government to have benefited from the tenancy reforms (8% of rural households, affecting 4% of rural land). However, marginal and sub-marginal holdings now number 60% of all holdings whereas they were 47% in 1962.

Even though the reforms were poorly and diversely implemented, there is good economic data (Belsey & Burgess 1998) to show that reforms contributed to the reduction in poverty between 1958 and 1992. They also tangible contributed to a rise in the agricultural wages of landless labourers. There is only ambivalent evidence that the reforms contributed to agricultural productivity.

There has been much criticism of the weakness of the reforms and of the mixed effects of the tenancy reforms especially. While the laws allowed tenants to acquire ownership or owner-like rights (to around 4% of land) the same laws resulted in the ejection of much larger numbers of tenants. The reasons were that the laws provided a generous right of resumption to landowners, enabling them to claim they needed the land for personal cultivation. Another legal loophole permitted tenants to surrender their rights voluntarily to landlords; this loophole was closed only after the damage was done.

Meanwhile, the abolition of tenancy altogether is seen to limit livelihood options for rural poor and landowners alike. Kerala, Jammu and Kashmir States ban all agricultural tenancies. Eight other states including West Bengal, Bihar and Karnataka and the Pradesh states allow tenancies only in special cases. Assam, Gujarat, Haryana, Maharashtra and Punjab permit leasing out of land to tenants but with stipulation that the tenant acquires ownership or a right to purchase after a period of one to six years. Tamil Nadu and Rajasthan place no prohibition on leasing land but regulate the rent, term, and tenant rights to purchase the land.

The majority view is that small farmers rather than landless or sharecroppers have benefited
from India’s land reforms thus far, fair rents have not been enforced, ownership rights were rarely conferred upon tenants due to the prerequisite payment of compensation to landowners payable by the State, and the right of resumption permitted absentee landlords to begin farming again through a range of unscrupulous mechanisms. The ejection of tenants destabilised occupation, land use and agriculture overall. In the absence of cheap credit provision many tenants are unable to borrow more from landlords resorted to even more expensive moneylenders and indebtedness. Most redistribution and most success has been in only a few states; only Jammu, Kashmir, Assam and especially West Bengal have redistributed more than 5% of arable land (see below).

Today 15 million households in India remain landless and another 45 million are functionally landless with less than 0.1 acre – a total of 43% of all rural households. Correlation with poverty is well accepted and landlessness considered the best predictor of poverty, over and above illiteracy, gender or caste. 340 million Indian households are agricultural wage-dependent and living on less than $1 a day. Of major concern is that while large estates have declined, the proportion of households holding lands which are marginal or sub-marginal for production continues to increase (60% in 2002 from 47% in 1962).

While reforms remain on the books, transfers slowed down dramatically after the 1970s and 1980s. Transfer of surplus land to tenants has proved extremely slow, with only one tenth handed over between 1995 and 2004. This suggests that it will take 90 years to dispose of remaining ceiling surplus, currently tied up in litigation.

Forces both pro and against revitalising redistributive land reform are vibrant at this time in India. Those favouring market liberalisation want ceilings removed altogether and complete freedom to do as they wish with their lands in service of a free market in land. Most others argue for a new tenancy reform. They show how the laws have served only to send tenancy underground, increased the area of idle land and absentee landlordism and cite the lack of growth in states like Kerala, Andhra Pradesh, Bihar, Himachal Pradesh, Madhya Pradesh and Uttar Pradesh, all of which banned leasing of agricultural land, but at the same time have a high rate of concealed tenancy. Lack of assistance to small farmers means that many now lease their land back to landlords but for poor rates, on the basis of rent regulation where it exists. Such reverse tenancy is becoming common in Punjab and Haryana.

Government officials argue for computerisation of records with Karnataka and Andhra Pradesh taking a lead. Credit programmes are increasing, along with tube-well and irrigation provision.

On the basis that while land reform is not enough to rid India of its abject poor it is equally invalid to exclude it, redistributive reform is being revitalized in some states and now with new national guidelines provided. West Bengal, Kerala and Tripura have most active programmes and claim these are slowly reducing poverty and increasing economic growth. Survey results from Karnataka show that tenants who have confirmed ownership or occupancy rights invest in land improvement and raise productivity and social status. West Bengal, Karnataka and Andhra Pradesh promote micro-plot programmes (0.18 acre) providing agricultural landless with areas where they may build homes, cultivate a garden or keep a cow or oxen, a few goats and poultry. A study showed 18-91% of food can be provided through this mechanism, residential security is dramatically improved and enhances social status, especially for women, and helps households bargain for work and credit.

Active demand for housing plots and farm plots has risen among the poor. Political land movements are gaining members exponentially, such as through the Janadesh Rally in October 2007 which marched from Madhya Pradesh to Delhi and caused the formation of the National
Land Reform in Nepal – Where is it coming from and where is it going?

Land Reforms Council in Government. A successful indigenous land rights movement is also underway; the new Forest Rights Act 2008 now gives dwelling and ownership rights to indigenous communities who have lived on forest land for at least three generations, even without document proof of customary ownership.

India has provided much material for research into the economic effects of land reforms. A careful analysis of economic and poverty data by Belsey and Burgess in 1998 in regard to land reforms in 16 Indian States between 1958 and 1992 showed that there can be an equity-efficiency trade off in tenancy reforms since both poverty and output per capita declined. However, tenancy reforms among the States were highly various in intent on the one hand and variously badly implemented on the other. The most successful effect was where owner or owner-like rights had been applied and enforced. This reduced poverty and increased output. All reforms did see a rise in wages for agricultural labourers.

Ceilings had little effect on either output or poverty, but this lack of effect was judged to be the result of poor implementation and enforcement, not that the strategy of imposing ceilings is necessarily counterproductive in itself. In contrast the thoroughly implemented abolition of intermediaries (zamindari and like cadres) reduced poverty and increased output. Consolidation incentives increased agricultural productivity without reducing poverty. Belsey and Burgess conclude that Indian reforms have reduced poverty and show how the reduction in poverty in India over the same period was at least partly due to the land reforms. However this is has been mainly through reforms affecting production relations (tenancy) rather than direct redistribution of above-surplus land.

Deininger et al. 2007 add to analysis on Indian reforms. Their data suggests three main findings: that first, by allowing households to increase investment, land reform had a positive impact on accumulation of assets in the form of physical as well as human capital. Through this channel land reform did promote economic growth, supported by significant coefficients in the regressions of income and consumption. Second, and contrary to most views on Indian reforms, land reform provided disproportionate benefits to households with lower initial levels of assets, pointing to a positive impact on equity. Third, they found that the impact of reform decreases with time, and helps explain why there are no clear overall national growth effects.


West Bengal

West Bengal has carried out land reform more fully than other Indian states. The overall land area affected by ceilings in India is 4.4% (and affecting 2.27% of households). In West Bengal 14.91% of the land area was affected and 19.73% of households. Tenancy laws affected only 5.35% of the Indian population overall but 10.8% of West Bengal’s population. 34% of all agricultural households have received some surplus ceiling land in West Bengal (one million acres).

Land reform in West Bengal falls into three phases:

- 1953-1966 in which ceilings were imposed but with little progress in redistribution and no progress in protecting sharecrovers (bargadars);
- 1967-1976 in which most progress was made in securing ceiling surplus land and only some progress in protecting bargadars; and
- since 1977 in which period there has been great progress in recording and protecting the rights of bargadars and redistribution of above-ceiling land has continued although more slowly.
This last phase is referred to as *Operation Barga*, launched by the Marxist government in 1978. This led to the emergence of 1.5 million sharecroppers with permanent and inheritable rights. District data (2002) and household data (2006) show a positive impact of land reform on productivity in West Bengal.

The main source of success is uniformly considered to have been the strength and purpose of implementation of reform (political will), determined recordation of all *bargadars*, enforcement of ceilings, and the strengthening of local government and peasant organizations and their active cooption in implementing the reforms. The land law (Land Reforms Act 1955 with frequent amendments since) and procedural rules were also more firmly crafted in favour of beneficiaries than in many other Indian states. There were fewer loopholes and exemptions for landlords to use. The priority beneficiaries for redistributed surplus ceiling land were firmly identified as the landless and Scheduled Tribes and Castes (those with one or more acres were not entitled to redistributed land). The landlords right to resume personal cultivation was limited in important ways; he may not use servants or labourers and may not terminate *bargadar* cultivation if this leaves the *bargadar* with less than 2.47 acres (1 ha). No landlord may terminate the right himself; it has to pass through government. *Bargadars* are given continuous, hereditary rights with protection against eviction. In addition, already by 1999 West Bengal has provided homestead land to over 300,000 landless agricultural labourers, *bargadars* and artisans (4% of agricultural households).

The process of *Operation Barga* deserves note: preparatory studies were thorough and public camps or meetings in the villages were frequent and geared to *bargadars* and landless. Fact finding on farm sizes was on the ground and through a quasi-judicial process and in a public setting. Oral evidence rather than documentation was used. Peasant organizations, village councils and land reform beneficiaries were all part of the process from the outset. Monitoring of progress was frequent and sustained. A shift to smaller plots to increase numbers of beneficiaries has been positive, showing that land size is less important than getting the land.

By 1999 nearly 60% of all agricultural households (over 4 million households) had benefited from the reforms. Since then, farm sizes have decreased with inter-generational partition, raising concerns and new plans.

Several measures are used to show the positive impact of the reforms on agricultural productivity, overall growth and poverty reduction; while average food grain production in India rose by 2.5% between 1980 and 1999, it rose by 4.2% in West Bengal; while food grain yields per acre grew by 2.8% in that period for all India, they grew by 3.6% in West Bengal; per capita calorie intake also grew in rural West Bengal by 9.6% but decreased overall in India; real agricultural wages increased faster and agricultural labourers work 30% more days a year than the national average. A key factor in growth has been irrigation and adoption of higher yielding paddy varieties. However, these were available to all India at the time. Most reviewers attribute the favourable conditions for private investment in agriculture provided by the land reform as a critical factor in higher than average levels of uptake in West Bengal. Bardhan and Mookherjee 2006 found that the supplies of IRDP credit and agricultural kits, local investment in irrigation and roads contributed to the rise in rice yields and farm productivity but due to the Barga programme were biased in favour of small and marginal farmers. They found kits and credit did not trickle down to landless agricultural workers.

There are several areas of change under consideration; to formalise what have become widespread voluntary arrangements between *bargadars* and owners, enabling them to buy part of the land, or surrender rights to one part in return
for ownership of the other; require the landowner to sell to a smallholder, landless household or bargadar rather than to anyone; introducing joint titling in new allocations (husband and wife); require both husband and wife to be recorded as bargadars; grant special priority to female headed households as reform beneficiaries; easing restrictions on fixed rent tenancies (preventing long term leases being agreed and preventing poor households renting in land); permit beneficiaries of distribution to sell their land after 10 years; and increase compensation to landowners losing ceiling surplus land for justice and to discourage hoarding.

Additionally a current amendment to the Land Reforms Act proposes to relax the ceiling to allot more land for industrial purposes and building infrastructure, but this has met opposition and is pending. Several large foreign-owned companies are affected and the withdrawal of their investment is considered unhelpful for industrialisation. The main concern is the numbers of people who will be displaced through large allocations, 40,000 people alone for a proposal for the Salim chemical factory. The current ceiling is 4.8 ha for irrigated land and 6.8 ha for non-irrigated land.


Japan

Compulsory land reform in Japan was ordered by General McArthur in 1945, resulting in the swift disappearance of the landlord class and a tenant class and complete restructuring of rural society into owner-operated smallholding. Although feudal in owner-tenant relations, there were only 2,500 estates larger than 50 ha. In 1935 half the five million land owners had less than half a hectare of arable land. There were nearly 21,000 absentee owners in 1941. 30% of tillers were tenants and another 40% were owners + tenant farmers.

This was a land to the tiller reform passed into law in 1946. However land reform had been on the agenda before the war and the 1946 law was fashioned upon a 1938 Land Reform Bill. The reform contributed massively to political stability, the post-war Liberal Democratic Party to rule for 40 years.

Implementation was greatly aided by these factors –

- There was a complete record of land owners
- The tight social structure of Japanese villages enabled easy identification of tenants and owners
- A pre-war reform had already begun to tackle the issue and there many specialists to guide implementation; this went back to a 1920 Tenancy review, a Land Tenancy Conciliation Law in 1924 and Owner Farmers Establishment Rule of 1926, along with a credit programme for tenant farmers which transferred 114,000 ha between 1926-1937, followed by a Farmland Adjustment Law in 1938 which allowed compulsory purchase of untilled land by local authorities, and with rent and price control laws right through the war
- Well-educated people could not get jobs after the war and the programme absorbed them; more than 400,000 persons were involved in implementation
- The landlords' political and economic power was already undermined due to various wartime regulations and the confidence of the ruling elite demolished through defeat and foreign occupation
- The reform was swiftly and comprehensively executed and wriggle room for absentee owners or large owners was nil
- Adherence to the rules was almost complete
- The American military occupation was fully behind the reform and although it did
not have to was there in the background threatening force.

The reform included compulsory purchase of land in excess of 3 ha and tenanted land of village landlords above one ha, paid at extremely low prices and made in National Bonds bearing 3.6% interest and redeemable within 30 years. Rents were frozen and to be paid in cash, tenants could not be evicted without assent of elected Land Committees set up in all villages.

By 1949 the reform was completed leaving only 13% as tenanted land, reduced to 9% by 1955. Owner cultivators increased from 31% in 1941 to 70% in 1955. Tenants fell from 28% to 4%. Absentee landlords disappeared with 80-90% of their land (over 1 million ha) transferred. Two million ha or one third of the arable land was distributed to 4.3 million households or 61% of rural households between 1946 and 1949.

The Agricultural Land Law strictly controlled the market in farmland, made subject to village approval. Landlords were permitted to sell their land only to their tenants. Village landlords were permitted to hold up to 1 ha tenanted land (and 2 ha of land they farmed themselves) but if they left the village it was compulsorily acquired.

The immediate effects of the reforms upon the economy were negative; for several years production and mobility froze. Increasing supply of fertilizer and programmes to improve farming technology helped removed the blocks.


Taiwan

Taiwan is famous as having redistributed nearly half all arable land to nearly two-thirds of farming households between 1949 and 1953. The scheme was borrowed from the Japanese reform and gained from its early lessons. General McArthur, intent on backing up Taiwan against the Chinese, virtually ordered the reform, although the Kuomintang was on its own behalf more than willing and anxious to prove its goodwill to the majority poor population. In 1949 Taiwan was a feudal society with tenants paying up to 70% of their crops in rents. Most of the land was owned by 20 families.

The reform was implemented in three phases over less than five years –

1. In 1949 land rents were reduced to 37.5% and landlords required to give 6-year leases. Tenants no longer needed to pay rent in advance, acquired right of first refusal if the landowner attempted to sell the land, and could apply for reduction in rents during times of crop failure.

2. The second phase began in 1951 in which public lands were sold to farmers at a fixed rate of 2.5 times the average yield, for which loans given and repaid in kind over 10 years, meaning the cost to the farmer was extremely low indeed. These were lands abandoned by the Japanese and comprised 20% of total arable land.

3. The third phase began in 1953 and was a full land to the tiller programme, forcing landowners to sell their land at the same price government had sold its land. A total of 432,000 families became owners. The tenancy rate dropped from 64% to 17% and the farmers were now paying 25% for 10 years instead of 50% of the crop to landlords forever.

The results were dramatic; farm production increased as farmers used more fertilizer, introduced up to four crops a year and diversified crops. Production rose at an annual rate of 5.6% from 1953-1970. Annual rice yields jumped 60% on average in the decade following the reform. Average farm income rose 150%, amplified by diversification. These higher incomes translated almost immediately into consumer power, helping to drive production of goods. Supply
also rose. Expropriated owners paid 10% in cash, 30% in stocks in four Government companies and 60% in industrial revenue bonds. They could do nothing with these bonds other than invest in any light industry of their choice. The strategy was two-fold: get capital in the form of land into the hands of farmers and get capital in the form of industrial investment into the hands of potential entrepreneurs.

“A tremendous number of capitalists were created overnight... the government sold land it didn't own, bought with money it didn't have and managed to expand both the consumer market and to provide the industrial production necessary to serve that market and serve it from local resources. There was no inflation because the money supply expanded at the same rate as production ... the experience of setting up small businesses lies behind Taiwan's later industrial success...” (Medaille 2005).

In 1945 there were 13.8% farm households and in 1964 there were 71.6% farm households. One half of the land had been redistributed to two thirds of the rural population. This created consumers. The gap between rich and poor closed to 4.5% after the reform, population growth rates and infant mortality dropped dramatically. Success was continued with clever pricing policies; agricultural prices during 1961-1975 were increased above the market price and the consumer price subsidised.

Like Japan, the land reforms did not lead directly to economic growth; this took over a decade or more after the reforms and has since been built on industrial growth. Nonetheless, its foundation is found in the 1950s reforms, of which the land reform was a pivotal part.

Most commentators agree that land redistribution would not been so successful without these factors:

- Speed was of the essence; the whole reform was implemented in a matter of five years, start to finish;
- Planning was impeccable; each stage was carefully mapped out;
- the arriving Kuomintang were displacing departing Japanese colonists and additionally, had no links with the indigenous large landlords; they were able to implement the reform with conviction; landlords were discredited and impotent;
- from the outset they packaged redistribution with support with credit, fertilizer, seeds etc;
- they understood that peasants should not have to pay for the land at its real value; this would just defeat the reform by burdening them with debts (oppressive rents converted into oppressive interest payments);
- nor should landlords get full compensation; this would just shift land capital into other capital without altering the economic and power relations of landlords and peasants;
- the Kuomintang coupled the land reform with an intelligent industrial policy. The ‘light industries’ were indeed light given the level of Taiwan’s economy at the time but wisely worked towards import substitution, producing items like bicycles, pots and pans, shoes, clothing and textiles and building from there.
- land was taxed at its full rental value to discourage low productivity.

Taiwan has never lost sight of the fact that whilst agriculture continues to provide a smaller and smaller proportion of GDP, it absorbs otherwise unemployed labour, maximises use of rural

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55 Payment of compensation at open market values of the land is regarded as a major element of the failure of the World Bank market-led distributions; this tends to make reform free for rich sellers and expensive for poor buyers who are saddled with debt, a main cause why so few want to buy and why so many of those who do buy the land have to sell it on, saddled with too much debt.
Annex A: A snapshot of selected redistributive reforms

lands, protects the environment and most of all, provides food security.

Although redistribution at scale has never been necessary since the reforms, farmers remain a focus of relatively cheap support programmes designed to maximise farmland use and productivity and to keep it competitive. Farmer organization, agricultural extension, credit, inputs and marketing support continue. Ceilings have been flexible, responding to changing conditions. The most recent programme has been to help farmers consolidate their parcels and guided and assisted investment for adopting new farming technologies.


South Korea

Roughly the same process had been undertaken in South Korea. In 1945 the US military government reduced rents to 33% of the crop share. It then forced the large landlords to sell their at low rates, three times the value of annual outputs, to be paid by government over 15 years, reducing its value further. By 1949-50 owners were being compensated with industrial bonds to buy up the industries of the departing hated Japanese. For most Koreans the reversal of Japanese colonial land policy was the priority. The programme was implemented at speed and with no time at all provided landlords to sell or divide their lands.

Due to the Korean War (1950-1953) agricultural production fell, taxation of new farmers was reduced and ultimately around only 50% of scheduled compensation payments to landlords were actually paid. Many landlords founded private schools with land compensation bonds, to provide important human capital formation. The reform contributed to increased agricultural income and value in agriculture increased 4% for 8 years without government interference, enhancing peasant political power. However this was overtaken by the new village movement and rural industrialisation so the roles of each in overall rural and urban growth are difficult to identify. As in Japan, non-farm employment and education were generally accepted results of the land reform.


China

China’s reforms have gone in progressive (and regressive) stages:

a. Before 1949 most land was tilled by tenants for landlords. Peasants organized against landlords in 1949 and when the Communists took power their holdings were confiscated and the land redistributed to some 300 million farming households on a strictly egalitarian basis. They were given ownership to the land they farmed.

b. From the mid 1950s collectivisation began bringing all private farms into village producer cooperatives in which private production was banned (1956). Production plummeted and helped create an artificial famine which killed up to a highly variously estimated 43 million people (1958-1960).

c. The 1970s and 1980s saw de-collectivisation and the introduction of the Household Responsibility System (HRS) in 1978. Peasants were given 15 year land use rights and able to sell surplus above fixed quotas. There were some losses of economies of scale as ‘noodle’ (thin strip) farms were created but HRS has been overall judged a great success and would result in the world’s greatest decline in poverty (by 167 million people during the 1980s) due to marked production increases. Average net income in rural areas rose by 11% outpacing urban income growth at the time.

d. However many of the policies were not implemented at local level and most farm households did not receive the promised land use contracts and periodic land adjustments to
provide land for new households or outsiders threatened stability. This has steadily become more serious with urbanisation as urban entrepreneurs lease collective lands for more commercial production. Town and city authorities also find no difficulty in expanding their areas to the cost of rural farmland and livelihood.

e. In 1984 the Communist Party urged local officials to extend the 15 year contracts to 30 years, formalised as policy in 1993. By then land adjustments had become the biggest threat to tenure and in practice most village authorities were still issuing short term rights.

f. A revised Land Management Law 1998 ordered that collectively owned land be contracted for 30 years and in written documents and made land adjustments subject to approval by 2/3 of the village assembly.

g. By 2003 a new Rural Land Contracting Law was in place entrenched the 30 year land right for China’s 210 million farm households. Farmland today comprises 1.4 million square kilometres, divided into approximately 210 million household plots averaging 0.65 ha. This excludes some very large state mechanised farms. China’s agricultural output is the largest in the world.

h. A rural rights chapter in a new Property Law 2008 confirms rather than amends provisions of the 1998 law by turning farmer contractual rights into a formal usufruct and specifying more clearly that farmers may mortgage their land, with the permission of the community. Regulations to limit distress sales are also inserted. However, it is anticipated that mainly peri-urban collectives will adopt changes.

Application of these laws remains weak at local level. Land readjustments continue, contracts are not issued and the drive for crop diversification under WTO accession has encouraged collectives to re-contract village land to non-villagers to garner fees which it cannot get when contracting to village members. Significant issues exist around the way in which urban enterprise including government itself appropriates valuable peri-urban lands and does or does not fairly compensate owners. These are likely to remain unevenly resolved in practice. Many of the protective provisions in the laws such as affecting women’s rights are simply not applied at local level. Registration of property is limited and the state fails to pay promised compensation in a sharp rise of ‘land takings’ for public purposes, commercial purposes and what appears like speculative purposes.

Access to land is high but security of tenure is not. Social unrest incidents in response to land takings have risen sharply during the last five years including violent conflicts between officials and farmers. Rural landlessness is also emerging for the first time since 1950, with estimates of 70 million peasants affected among China’s 810 million farmers. Debates rage at all levels including within the Central Party as to required remedial measures. The recent enactment of the Property Law may not be enough.


Vietnam

Vietnam became independent of the French in 1954 and saw the country divided into North and South, not to be reunified until the end of the ‘Vietnam War’ in 1975. Land reform in 1954 allocated full land ownership rights to farmers. Productivity rose. This was subsequently revoked and by the mid 1960s 90% of farmers had been brought into collectives. Farmers were permitted 5% private farmland and significantly, 60-70% of their earnings derived from these plots. In the South, the government flip-flopped between pro-landlord and land to the tiller approaches. The South adopted collectivisation after the Vietnam War but with not a great deal of enthusiasm and little success.
Growing economic crisis led to sweeping economic reforms in 1986 (the Doi Moi Policy or Renovation). This initiated a trend which has become more and more open market-oriented since but still embedded in a communist party state. Agricultural land was de-collectivised in 1988. Ten to fifteen year usufructs were granted to households. Households were also given the freedom to determine crop choices, marketing strategies and a range of other decisions related to farming.

Land was parcelled out to members of collectives equitably, although landless households, mainly existing in the south, did not receive allocations. Fragmentation was also a problem as each household wanted a share of different land categories. De-collectivisation diverged significantly from the Chinese Household Responsibility System which still tied households to collective decision-making of quotas and land allocation. In Vietnam, de-collectivization for all intents and purposes amounted to privatisation, save for the fact that right-owners were unable to sell the right.

This was remedied by a new land law in 1993. This gave households the right to inherit, transfer, exchange, lease and mortgage their land use rights. As in China, the land itself remains state property. Additionally, the lease term was extended to 20 years for annual crop land and 50 years for perennial crop land. The reform almost certainly aided the rise in agricultural production and a clear fall in poverty between 1993 and 2002 (from 58 to 29%), but in concert with other elements of the Doi Moi reforms.

The 1993 land law also provided for titling and registration. By 2000 11 million Land Use Certificates had been issued. By 2002 90% of agricultural land and 50% of forest land had been allocated with certificates issued, all on an egalitarian basis. The process is mapping and administration heavy but represents the largest and swiftest ever titling programme in the world, except for the recent Ethiopian titling programme which has seen 20 million farmers receive titles over five years.

The reform has had a significant impact upon household on-farm investment. It has not thus far had a significant impact upon household consumption expenditure or agricultural income. Nor have titles triggered credit access, largely the result of a still restrictive banking system. Nor has a vibrant market in land been created by the reforms. Even a rental market in arable land is limited.

What has occurred is a rise in landlessness, fuelling debate about the wisdom of the reforms. However careful analysis of the trends by Ravallion and van de Walle 2007 shows that the landlessness rate is higher for rural non-poor suggesting farmers are selling their land to pursue more rewarding off-farm or urban activities. They find no loss to the gains to the poor from the relatively equitable assignment of land use rights through de-collectivisation. Only in the south’s Mekong Delta do they find emerging class differentiation. Overall poverty is falling at the same rates for landless and landed.

An issue confronting land reform in Vietnam has been the handling of customary land rights, widely existing in mountain and ethnic minority areas. These were overridden by collectivisation in the 1960s as communities, hamlets and groups of households comprising customary groups were not considered legal entities. Expanded exploitation of forests (43% of the land area) following Doi Moi have had an overlapping suppressive effect on land rights in those areas, along with household based land allocations and certification. Large-scale logging has resulted in around half of the primary forest disappearing since 1980. The new land law of 2003 which came into force in 2004 is considered a milestone as it recognises communities in addition to households and individuals as legitimate entities.
who may apply for Forest Land Allocations (FLA).

A number of conflicts surround these allocations including between migrants and ethnic minorities and ethnic majorities, the latter being the predominant recipients of FLA. There are also protests where Government fails to pay compensation for land it takes for public purpose, a rising occurrence with growth.


Cambodia
Prior to 1953 all land belonged to the King with usufruct issued highly unevenly to farmers. During the French Protectorate (1953-1975) era usufructs were privatised, again with inequitable effect.

Private property was abolished under the Khmer Rouge Democratic Kampuchea regime of 1975-1979 and farmland reorganized to fit in with a national irrigation plan.

In 1979-1989 under the People’s Republic of Kampuchea each household received an equal share of land based on their household size at the time, and as a member of farmer cooperatives. Only house and farm plots were distributed leaving most of the land area under State ownership, the major source of competition and inequity today. This has included allocations of customary lands to large multi-nationals and to government schemes aligned with state elites; for example, one company associated with the Prime Minister controls 7.4% of the total land area of Cambodia. Farmlands are also insecure in many areas due to large schemes and reallocations and slow registration. Today an estimated 20% of households are absolutely landless, 25% functionally landless and 40% hold only 10% of arable land while 20-30% own or control 70% of the land.


The Philippines
Farming today in the Philippines comprises a small farmer sector and a corporate or capitalist farmer plantation sector. Most of arable land remains in the hands of a few politically connected farmers and landlessness runs at high levels for the region. The poverty incidence is high and rising since 1985.

Landlessness and share tenancy emerged during the Spanish colonial period and heightened during the American occupation during the first half of the 20th century. Peasant revolts persisted through the 1930s to 1950s. The response was settlement schemes, a promise of limited tenancy reform and state repression.

The 1960 redistributive reform set ceilings high, exempting most farms, and although share tenancy was declared illegal, it was never enforced.

The Marcos land reform of 1972 followed but was limited to tenanted rice and corn lands. By the time he was overthrown in 1986 766,630 ha had been redistributed to 444,277 families and nearly 700,000 contracts were awarded to 645,808 tenants. The power of landlords in the rice and corn farms was weakened. Still, in 1988 70% of the agricultural population were landless or near landless, with share tenancy favouring the landlord with 2/3 of the crop. Total farmland in 1988 was 10.3 million ha with ownership skewed at 0.647 inequality.

The 1988 land reform (Comprehensive Agrarian Reform Program, CARP) aimed to provide land to 5 million landless and land poor peasant households. Around 4 million ha of the
Annex A: A snapshot of selected redistributive reforms

land intended to be subject to redistribution disappeared from the scope of the reform by 1996 and much of the programme settled around Voluntary Offers to Sell and Voluntary Offers to Transfer, rather than the direct expropriation instruments. Ceilings were set at 5 ha for individuals up to 14 ha for families.

Up until April 1994 1.5 million ha had been distributed (39% of the target) and delivery would continue only slowly with ambivalent political will. By 2004, 16 years after the reform was introduced, official records indicated 5.9 million ha of private and public lands had been redistributed to 3 million peasant households. An additional 1.5 million ha had been subjected to tenancy leasehold reform benefiting one million households. However critics reviewing the data and procedures suggest both statistics are inaccurate and that real beneficiaries are in the region on 3 million households overall, 2/5th of the total agricultural population.

A major concern is how pro-poor the redistributions have in fact been. From 1996 the World Bank lobbied for a market-led approach and launched the above Voluntary programme in mid 2003, against significant popular protest. This willing seller willing buyer strategy was irrelevant to the poor and additionally undermined the State-led redistribution programme. Support programmes were also focused on the better-off.

Meanwhile, the property tax system allows speculation on land, the administration of land reform is corrupt, involving no fewer than 19 different agencies, and public trust in titling is low. One third of rural parcels are still not titled. Informal land transactions remain the only avenue for most of the landless to acquire land. Squatter cities grow annually.

A further concern is that most of the ‘redistributed land’ comes from public land, leaving much of the private land sector intact. A main vehicle for the former has been the distribution of use and management rights on 25 year contracts over forested public land through a Community Based Forest Management Program. This has been criticised for excluding the poor, for including allocations to private elites, and for excluding most of the forest base.

There is general agreement that the reform genuinely positively impacted upon the income and welfare of beneficiary households during the 1980s and 1990s, although the income of share tenants was cut by half in the same period. There is clear evidence that redistribution was the key factor in this, not concomitant introduction of improved seeds, infrastructure and modern farming technology, with average income rises for reform beneficiaries nearly double that of non-beneficiaries. The comparisons suggest that improvement in beneficiary lives and livelihoods can result from land reform and unreformed tenure relations perpetuate or even worsen pre-existing poverty and social exclusion. However despite the high degree of redistribution and leasehold reform, poverty continues to be significant and stems from weak pro-poor policies overall.


Eastern Europe and Central Asia

Collectivisation took time to evolve in the Soviet Union, begun in 1939 and completed only in 1989. A decade later, de-collectivisation began in most former Soviet Union Republics following the break-up of the Union. Eastern European former Soviet satellite states have generally moved to full restitution of socialised lands to pre-socialist owners (Czech Republic, Romania, Bulgaria and Hungary, Poland).

Elsewhere full privatisation has been rare, Governments retain full ownership of the land and issue only use rights or ownership of enterprises on the land. In Russia for example, many families feel unable to operate independently due to the
mechanised scale of farming and most remain in cooperatives with state credit assistance and machinery. Or, a half-way arrangement emerges; in the Ukraine for example, members of collectives became shareholders of privatised cooperative farms. In Kyrgyzstan families now may acquire 49 year transferable leases up to 30 ha per family but with 2.4 ha the average of those actually issued. In Uzbekistan, the state retains ownership, allowing households usufructuary rights only. In Kazakhstan opposition to a market-oriented land reform bill led to the ouster of the President in 2006. Full de-collectivization has occurred mainly only in Armenia, Georgia, Kyrgyzstan and Moldavia.

**Armenia**

In Armenia 70% of arable land was redistributed to around 300,000 peasant farmers in the early 1990s, averaging 1.3 ha. Final titling began in 2003 and is nearing completion. An open market in land has emerged since 2000. Land leasing, out-migration and sales under liberalisation have begun to see polarisation. This correlates strongly with the area of land and other capital (machinery, savings) held by that farmer. Without credit and cooperatives smallest farmers are at an acute disadvantage.

Hay lands and pasture lands comprise 50% of the total land area and are owned by the State. In 2003 the decision was made to devolve control over 65% of these to community councils (the remainder being outside community domains). These were communal lands in the pre-Soviet era and unlike most Soviet Republics, although government took ownership, communal access systems were retained. This has been most prominent in Armenia, Mongolia and Kyrgyzstan. Although in Armenia today these lands technically remain the property of the State, community councils may freely decide to sell, lease, subdivide and/or privatise their rights to the pastures. 74% of farmers are reported to be opposed to any form privatization of the pastures and retain the pastures as communal property.


**Afghanistan**

Land policies in Afghanistan stem from the 1890s when with British India assistance Pashtun tribesmen conquered the central and northern half of Afghanistan and brought the entire area under Pashtun-dominated statehood. A crucial thread of the policies was the cancellation of all local land rights to pasture land generally held collectively by each village, and the allocation of rights to use the pastures to favoured Pashtun nomads, who changed their seasonal migrations accordingly to take benefit of these new lands.

With American aid the 1940s saw significant irrigation schemes develop in Helmand and other southern areas and resettlement schemes around these. In the 1960s USAID assisted King Zahir Shah to register and title all farmland in the country (no more than 12% of the total area), a process which reconfirmed pastures as the property of the State (45-65% of the total land area). The recapture of the pastures by non-Pashtun villages and tribes was a key objective of rebellion and civil war from 1979-2001.

Land relations within each tribe and between tribes were feudal, with marked degrees of landlessness, exploited tenancy and gross indebtedness. Redistributive farm land reform began in 1975 under President Daoud. The instrument was a Land Reform Law, 1975, which set ceilings for all classes of land. The surplus was to be paid for over 25 years and with 2% annual interest. Priority beneficiaries were landless farmers in the local area, then landless nomads, other farmers seeking land and graduates of agricultural schools. They were to pay for the land in instalments with 3% interest. The farm could not be transferred or mortgaged until fully paid for. If the new allocate did not occupy the land within six months – usually the case due to
lack of credit, tools or seed – the land reverted to government. A Land Tax Law was enacted in 1976, exempting landless and those who owned less than two fifths hectare, government and municipalities.

The murder of President Daoud in 1978 and the establishment of a Russian-backed communist republic saw a new Revolutionary Land Decree, 1979, reducing the ceiling and allocated land free to landless farmers and exempted no category of person or institution from redistribution. Within eight months 250,000 families had been given 600,000 ha. Sister decrees were issued against Usury to limit indebtedness, forced and child marriages and prevention of women's education and it was resistance to these which aroused further rebellion and Russian invasion. New land reform decrees were issued (1979-80), exempting mullahs and commercial (large) farmers from redistribution and under Russian advisers the reforms became an orderly project, mainly focusing on the allocation of wastelands to formed cooperatives of farmers. In 1983 2.5 million ha were earmarked for the Nationwide Land Reform Operation.

Civil war and also Soviet pillaging of villages made this impossible and ceilings were in fact revoked by the mid 1980s. The Reform was further scaled back with the change in government in 1986, with the new President Najibullah declaring that the main beneficiaries had been corrupt land reform officers, a claim echoed in 1989 by retreating Soviet generals. A new land law in 1987 permitted landowners to rent their land out, signaling an almost total return to pre-Reform 1974. With the massive destruction of homes and lands on their minds, few were interested in land reform thereafter, especially by 1992, when Mujaheddin-led civil war embraced much of the country. Warlords, militias and political parties took over vast areas of private land especially common lands (which local communities had often regained in practice) and expansion of cultivation into the fragile pastures was especially rife and damaging.

The capture of the state by the Taliban (1994-2001) saw land grabbing curtailed and even a new Decree recognising that at least pastures closest to each village were their property. Pashtun nomads were again assured control of the valuable high pastures. No talk of redistributing farmland was heard and land taxes remained unenforced, the last paid in 1980. Following northern conquest over the Pashtun Taliban with American aid in 2001, Karzai took the Presidency and was duly elected several years later. Redistributive reform is explicitly not on the agenda. Significant efforts are being focused however on the reform of ownership of expansive pastures, with slow but steady movement towards legal acknowledgement that the majority of these are rightfully the collective property of rural communities, and restructuring nomad rights as seasonal access rights only. Some Pashtun nomads heatedly contest this trend on the basis that they were given the Hazara high pastures in the Hindu Kush in 1893. The more aggrieved have raised flags of support for the Taliban on the edges of the Hindu Kush, demanding entry which Hazara and Tajik now deny, without negotiation as to access rights. This has brought the issue around common property ownership firmly onto the conflict agenda.

Sources: Alden Wily, 2003, 2008d.

LATIN AMERICA

Despite the reforms, landlessness continues. 90% of Latin America is in large farms accounting for 26% of farms, large areas of which are idle. The 50% smallest farms embrace 2% of the land. To this extent, land reform has been unsuccessful in Latin America. The continent and islands are large however and reforms have been successful in redistributing significant amounts of land; especially in Mexico (13.3 million ha), Brazil (13.1 million ha), Bolivia (9.7 million ha), Chile (9.5 million ha) and Peru (8.6 million ha) – or nearly 58 million ha including Nicaragua and El Salvador.

Poverty is also rife and not falling, and closely associated with landlessness. 55% of rural households fall under the poverty line compared to 34% of urban households.

According to de Janvry et al. (1998) Latin American land reform falls into three phases –

1. Reform through expropriation of large estates and collectivisation of beneficiaries;

beneficiaries were former hacienda workers and this excluded many landless farm workers and small to middle landholders. Workers were granted rights as members of collective farms and ejido communities. This was the case in Mexico, Chile, Peru, Honduras, Nicaragua, El Salvador and the Dominican Republic. Often the intention was that in due course these collective areas would be subdivided into individual farms but this was not often realised. This was undertaken only briefly in Guatemala (1952-54) followed by the Dominican Republic, Honduras and El Salvador, and in Bolivia and Peru, where some 20% of beneficiaries were given individual farms, usually on marginal lands. In the interim, collectives were rarely offered the infrastructural and institutional support needed to make them efficient producers. In Chile by 1973, 76,000 workers were organized into collective farms. Similar developments occurred later in Peru.

Reform in almost not cases embraced the entire farming community, with key sectors exempted. In some cases ceilings were imposed in these areas, the case in Mexico, Bolivia, Nicaragua, El Salvador, Chile and Honduras. Often the threat of expropriation if owners failed to modernise was used to good effect, encouraging uptake of credit and technology, focused on these large-scale and potentially commercial sectors (Colombia 1961, Ecuador 1964, Chile 1962-67, Peru 1963-68, Brazil 1964).

2. De-collectivisation and assisted purchases;

the second phase of land reform in Latin America began in Chile in 1973 and spread throughout Latin America triggered by the debt crisis in 1982. The result was widespread de-collectivisation and advancement of individualising titling programmes (Mexico 1992, Nicaragua 1990, Peru 1980, Honduras 1992, El Salvador 1991). There was also some restitution to original owners in Chile 1973.

In Mexico the 1992 amendment to the 1917 constitution opened the door to individual titling in the ejidos and freedom to sell and rent these lands. This is still underway in 2008 but the majority have chosen to retain their land as collectively-owned and then individually allocated/ Forested areas have been almost all retained as collectively owned and managed, with a dramatic rise in small forest enterprises, adding greatly to incomes.

In Nicaragua individualisation began in 1990 after the Sandinistas were removed from power; there was widespread restitution of farms to previous owners and additionally some 80% of State Farms were parcelised.

Market-assisted redistribution is well advanced in Colombia from 1994. Beneficiaries may apply for a 70% grant to buy land in the open market or via the land reform agency. There
are also strong efforts to expropriate the large tracts of land taken by drug traffickers.

In Chile 30% of expropriated land was returned to former owners. Estimated half of the beneficiaries of earlier distribution sold their lands. Ultimately only 5% Chilean peasantry gained and retained access to land through the land reform.

3. *Land to the landless via distribution of idle land, private but mostly public lands*; since around 2000, a new phase of reform has begun. This has been largely driven by landless movements on the one hand and indigenous land rights movements on the other. In many cases subsequent programmes of giving land to landless is aligned or integral to decentralisation of government and new rural development programmes. The route for land access now is through a focus on releasing idle lands and support packages for beneficiaries. While these initiatives are not driven by government, governments are responding.

People led reform is currently most active in Brazil, which originally had the least active land reform programme (The Brazilian Government reneged early on a 1930 land reform programme). It has however from the 1980s been forced to act, directly as a result of the Rural Landless Workers Movement (MST), By 1998 MST had established over 1,000 land reform settlements through land invasions. It used the commitment in the 1964 Constitution that unproductive properties would be eligible for expropriation and redistribution. Between 1964 and 1996, some million ha was expropriated or regularised. Nonetheless, this still represents a tiny percentage of the total land area, the vast bulk of which continues to be owned by comparatively few owners each of whom holds vast estates.

At this time, land reform in Brazil follows three parallel and sometimes contradictory routes:

1. a market-led reform is actively supported by the World Bank;
2. a programme exits which addressed well over 3,000 land invasions and spontaneous squatter settlements organized by MST and other activist agencies; government provides credit, compensation to owners, and related assistance, and the programme is considered highly cost-effective in comparison to the costs of supporting improvements and regularisation of burgeoning shanty towns and related job creation in urban areas. Land reform farmers earn 3.7 times the minimum wage of urban poor who earn 0.7 of the minimum wage; and
3. a third programme, which endows indigenous communities with territorial recognition of ownership. This has emerged in response to a Constitutional Amendment 1988 requiring this. Since the programme slowly got under (1990s) 87% of indigenous territories are now fully demarcated. Together these embrace 12% of the total country area. However only 20% of Brazil's workforce is agricultural now and 1% of the population still own half the total arable land.

Results overall in Latin America’s land reforms since the Mexican Revolution in 1917 include the following trends –

1. Many landless and farm workers have remained outside the aegis of reforms and have gained little. These people represent a sizeable and growing sector – and the poorest in most countries on the continent;
2. The emergence of a smallholder sector has occurred, never traditional in Latin America. However this new smallholding sector is not dominated by peasants but by people of non-
Land Reform in Nepal – Where is it coming from and where is it going?

peasant origin investing in agriculture, or descendants of former larger estate families, now holding smaller, but still productive farms;

3. Inequity in rural land ownership is still extreme, including very large estates which have not been subject to subdivision and which are supported or owned by powerful agri-business interests;

4. Inequity within the former collectivised farms is also significant;

5. The farming system is characterised by extremes; in many Latin American states, there is both a great deal of idle useable privately owned land and a great deal of overworked land in especially the small farm sector;

6. The land rights movement is vibrant of often violent. Mobilisation is more or less constant;

7. There have been many reforms and embracing large areas and affecting large number of beneficiaries. However few have emerged as competitive farmers in market terms. These trends are common (a) land sales by the poorer farmers (b) land re-concentration in the hands of better off families (c) significant proletarianisation and off-farm migration; this has been most marked in Chile where half of all reform beneficiaries have sold their land because it was so heavily mortgaged through lack of credit and other support. Two thirds of these lands have been acquired by larger farmers and only 5% have been sold on to landless households; and (d) beneficiaries retain the lands as food self-sufficient farms but need to complement this with seasonal participation in labour markets and migration.

De Janvry and Sadoulet 2002 conclude inter alia that overall –

1. Land reform has been successful in displacing the traditional landed elites but not in properly incorporating the beneficiaries of reform in the economy

2. The poverty issue has not been solved through land reform

3. Land reform itself has been unnecessarily tortuous, slow and partial

4. Land use is only one of many strategies in rural livelihood in Latin America

5. There have been many paths to land access and key paths remain insufficiently explored (they favour market-assisted and rental assisted reforms)

6. The need for land reform continues and should become systematically embedded in programmes focusing the poor.


Bolivia

Bolivia’s land reform policies of the early 1950s were implemented more rapidly and completely than those of other Latin American countries aside from Cuba. However it has been marked throughout by decolonization by one hand and colonization by the other.

In 1953 under an Agrarian Reform Law the radical reform allowed (indigenous) peasants to claim the land that they had traditionally worked on vast estates acquired by generations of colonists. A negative effect was that peasant farms did not increase in size. The law was amended in 1963 and 1968. By 1986 the government claimed to have redistributed 33 million ha. Agricultural production did not however increase as a result. The reasons identified related to price controls
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Regional conflicts also raged between the highlands and lowlands, during the same period the remote lowlands, historically occupied also by indigenous populations, were colonized, with government assistance but mainly through voluntarily efforts. Large scale agriculture was promoted. Colonizers included some dispossessed landlords from the uplands, indigenous groups but also foreign immigrants including from the USA and increasingly, land speculators. This new colonization, often backed by significant finances, continued right through the 1990s. This was aided by market liberalization in the country (and continent) begun in 1985 under the coercion of the World Bank, and which opened Bolivia fully to international agri-business. The process was marked by corrupt land grants by allied Government officials and fraudulent purchases. Conflict between indigenous people and large scale purchasers or grantees grew in the lowlands.

A new reform was introduced in 1996 which recognized indigenous territories and promising land to poor farmers. The law put in place a laborious procedure to address disputes and did not establish criteria for restitution of large speculative holdings. Land invasions by indigenous peoples resulted. Well over 100,000 landless households are today looking for land and whose needs cannot be met entirely from residual state land. 60% of the total population is below the poverty line and 38% live in extreme poverty. 50,000 households own almost 90% of the country’s productive land. The eastern lowland states have a per capita income 40 times higher than other states. Nonetheless some 17% of scheduled 107 million ha was redistributed during the 1990s.

In 2006 the Morales administration introduced a new reform law to speed up the 1996 distribution process. He presented land titles for 3 million ha to 60 indigenous communities and groups and promised that Bolivia’s 2.5 million poor would receive title to 20 million ha by 2011. This has reduced invasions but has also increased conflict with lowland landholding elites, many of whom are foreigners. Nonetheless, Morales has pressed on with redistribution. By August 2007 allocations had risen to 5.1 million ha including half a million ha of state land to landless. Small and poor farmers have also received title to 160,000 ha. The Morales legislation is not radical, permitting ranchers to claim up to 50,000 ha as long as they have one adult cow per 5 ha. Recent gas developments in lowlands areas are bringing in revenue but have antagonizing the larger land owners on whose land this state commodity is being harnessed. The difference in wealth between highland and lowland Bolivia continues to sharply divide the country, particularly as Morales intends to use gas revenue for national pension schemes, taking most of the revenue outside the lowlands.


AFRICA

Egypt

Between 1924 and 1954 there were attempts at reform each pre-empted by the rural elite and high ranking officials. In 1952 when Nasser took power, 94.3% of land owners held only 33.4% and 0.1% of the population owned 19.7% of the land.

Nasser’s agrarian reform was the first large-scale land reform in the Middle East, and the most influential. Laws in 1952, 1961, 1963 and 1969 distributed 12% of total cultivated land. By 1962 there were 300,000 new landowners and 94.1% of landowners owned now 52.1% of the arable land. Rents were fixed for several million tenants and security of occupancy guaranteed. The ceiling was high, 100 feddan (acres) and many...
small farmers also gained through the reforms buying more land. The reform affected only one third of tenants and few landless wage labourers. There was also an increase in landless labourers as large estates broken up. Ultimately the reform was seen to be partial, and failed to break the stranglehold of financiers and large landowners. Many retained ownership of significant lands although now formally tenanted. The provision of compensation to the dispossessed, high and different ceilings at different times, continued inequality in holdings, and limited coverage of reform among the poor, also failed to transform power relations or the political landscape.

Market reforms from the 1980s and especially from 1991 at the behest of the World Bank under structural adjustment encouraged elites to push through revocation of the 1952 law in 1992. This began full implementation in 1997 after a five year transitional period. The amendments revoked tenancy protection and landowners were permitted to sell the land, and even without notifying tenants. Rents were no longer fixed, and these promptly soared. Ceilings were abandoned. Evictions, loss of crops, access and homes were massive, less through sales than through reoccupation by landlords and charging of high rents to tillers. Indebtedness has also sharply risen. Rural violence has been unorganized but rife. Nonetheless, contributing donors, USAID and FAO, report positively on the success of market-led privatization and liberalization. In reality the land market has not flourished; what has occurred is a return to the pre-1952 situation of large holdings, and also a rise in owner-operations, by 18.2% between 1990 and 2000.


**SUB-SAHARAN AFRICA**

The major issues confronting Sub-Saharan land relations have been the imbalance of land granted white settlers/colonisers and latterly, the treatment of customary land tenure regimes and thereby customary rights under national laws. In some instances there has been intra-State colonisation such as between Arabs and Africans in Sudan, a cause of the 24 year civil war and which continues in Darfur (and threatens to restart in Southern Kordofan, Beja and other areas).

In rare cases in Sub Saharan Africa, systemic feudalism has existed. For example, Nyarabanja tenancy was practised in one part of Tanzania up until its abolition in 1969.

The more classical case of feudal land relations was in Ethiopia. This led to concerted nationalisation and redistribution of land to peasants in 1975 following the downfall of Emperor Haile Selassie. Feudalism was full destroyed. Most farms were made into individual peasant farms with some state farms (5%) and a few cooperative farms (2%). There was a small increase in productivity but this was soon lost due to restrictive state policies on production and in particular, periodic redistribution of farmland among households every few years to adjust for new families. From 1991 policies changed and while the state has retained ownership of the land, the periodic land adjustments have ceased. Farm registration has been the major programme of the last five years with some 20 million parcels registered and Books of Ownership issued. Registers are maintained at community level. In several of the Regional States under the federal system, and notably in Amhara State, local forests and other collective resources have also been registered, as community property. Ownership amounts to a fully transferable right to the land. Legally a community may still choose to adjust (redistribute) holdings but no case of this has occurred for five years.

Various experiments in collective production have been attempted especially during the 1970s (Sudan, Ghana and Tanzania). The most well-known is the *Ujamaa* programme in Tanzania begun in 1973 which saw communities clustered into villages (but in practice, involving relocation...
Annex A: A snapshot of selected redistributive reforms

in only six of 20 regions). Collective farming (*bega kwa bega*) was launched in each village to enable tractor cultivation across private fields, families retaining private farms. This did not last beyond 1978, although many communities retained a community farm for producing maize for disabled or other disadvantaged members of the community well into the 1980s or even 1990s. Villagisation itself was retained and today rural Tanzania comprises a mosaic of 10,700 Village Areas, each with its own elected government and which has complete control over land relations within the Village Land Area, on the basis of decision approved by the Village Assembly, the village population above 18 years. With the enactment of the Village Land Act 1999, this devolution of land administration has been formalised, with the elected village government bound to establish and maintain a register of all private and communal holdings within the Village Land Area, and to maintain record of all transactions. As communities already feel they have significant control over local land relations, response to these opportunities has been noticeably low. Few if any communities permit land to stand idle for long, coercing its sale or renting out to other villages and are generally loathe to see significant differences in farm sizes evolve. Involuntary landlessness is limited and village governments are expected to work within the community to find land in such cases. No community may register individual holdings until the community has agreed the location of all collectively owned assets, like forests, pastures and swamplands. A supporting forest policy and new law (2002) encourages rural communities to set aside forest as Village Forest Reserves, that is, areas which will remain forested indefinitely but fully under the control of the owner community. More than 1,200 communities have already done so, established Village Land Forest Reserves over two million ha of forest. An incentive to do so is that reserve-creation limits the expansion of better-off villagers into common resources and additionally double-locks forested land against possible appropriation by the State for external investment or other purposes, a real threat, not helped by unclarity in the land laws as to the status of land which is not utilised. Contradiction or inconsistency between rights over wildlife and land on which wildlife roams has also provided a major loophole through which the central State has often secured common properties and passed these onto investors or commercial users, against the will of the land owning community.

**Racial restitution without redistribution for equity:** the greater inequity was between colonisers and indigenous peoples but the numbers of the former were proportionately never great (save in several Southern African states) and their control of land was tightly linked to the colonial state itself. Most nationalisation has been undertaken shortly before, during or immediately after the country secured independence from European metropolitan states (Britain, France, Belgium and Portugal). This was not uniform; for example Liberia did not nationalise large estates (including the one million ha owned by Firestone), and Tanzania did (1969). Even then, nationalisation has usually been on the basis of payment of compensation and at open market rates.

For example, in Kenya the British bought out 1.25 million ha of the white settler owned lands in the late 1950s and began redistribution continued by the early 1963 independent government. Redistribution was not necessarily to holders who derived from the tribes which had originally owned those lands but to those most immediately in need or looking for land, and these tended to be members of the politically dominant tribe (Kikuyu), most affected by British occupation and development in the fertile central zone. This started a process of inter-tribal contention which finally surfaced in forced displacement and land-based riots in early 2008, and has yet to be addressed.

South Africa, Zimbabwe, Mozambique and Namibia are the locales where there has been greatest white settlement. Restitution of white
settler farms to indigenous populations is the norm – but has been achieved with limited success.

The exception is Mozambique where no former large white farms exist and where new law (1997) and programmes enable local communities to formalise rights over very large areas of land. This exists however in fierce competition with a vibrant and foreign-supported private rural enterprise/agribusiness sector, and which government also aids and supports, producing characteristic tensions and unresolved strategic issues.

In Namibia less than 1% of white owned land has been distributed following liberation (1990) and Namibians of white origin still hold around 40% of the land area.

In South Africa only 4% of farmland has been distributed against the 1996 commitment to redistribute 30% of privately owned lands. A massive farm worker and squatter issue persists, with little resolve as to real rights and virtually no partition. The World Bank promoted willing buyer willing seller programme has failed. This resulted in a demand for compulsory acquisition, but which has recently turned down by the government as unconstitutional.

In Zimbabwe the target for restitution and redistribution in 1980 was for 9 million ha to be distributed to 162,000 households. By 1989 only 3.3 million ha had been redistributed to 54,000 settler families including 0.5 million ha of commercial land. Over 80% was acquired on a willing buyer willing seller basis but government ran out of money. There were also complaints that the land was being given to party officials, often for speculative purposes, and that neither farm workers nor the rural poor were significant beneficiaries. A constitutional amendment in 2000 allowed the president (Mugabe) to expropriate settler lands without paying compensation. 4,500+ white owned farms covering 11 million ha have since been expropriated, targeting mainly absentee landlords and foreign owners. Local support for this has dwindled as it became clear that beneficiaries were again party cadres, rather than farm workers or needy people. At least 90,000 farm workers have lost their jobs. The larger failure has been the lack of a thought-through support programme to enable new holders to use the land commercially, resulting in total economic collapse, social unrest and as yet unresolved political challenge. Much of the former white owned lands taken now lie idle.

There is currently widespread land administration and land tenure reform throughout Sub-Saharan Africa. Under land administration reform the main thrust is titling, but with significant changes as to how land and houses are titled. En masse titling was originally launched in 1954 by the Swynnerton Plan in Kenya which aimed to turn 33 million ha of tribal territories into individual freehold parcels, favouring progressive farmers. This has never been completed but where it was, has demolished customary rights, dispossessed millions of pastoralists, and deprived women of land rights in the failure to include their names in single-name title documents. The process, as characteristically the case with subsequent donor-promoting freehold titling programmes, also saw the entire forest, pasture and swamp areas of customary lands handed over to government as state property. Much of this was then acquired through various mechanisms by elites.

Titling continues throughout Africa but has seen significant shifts in the last decade as to who is titled, how, and where. There are two main directions: regularisation of squatter occupancy in Africa’s burgeoning cities and towns and devolution of land authority and registers to district and lower level in rural areas, including to village level, such as in Tanzania. Co-ownership, family title and collective title are all important developments.
Redistribution of lands between people and State, not inter-class equity: The main shared objective of tenure reform is on the last, directly linked to the most radical shift in land relations in Africa today: steady moves towards recognising indigenous/customary land interests of c. 500 million people as private property rights, not occupancy and use rights on public/state/government land.

This will in due course affect over one billion ha of Sub-Saharan Africa and includes not just agricultural lands but forest, pasture, swamp and other collectively used and managed lands. This reform represents recognition rather than redistribution but does redistribute land from the State to people. These countries have taken significant steps towards this, largely through a series of new land policies and land laws, and a still noticeably slow implementation support: South Africa, Mozambique, Namibia, Côte D’Ivoire, Niger, Guinea, Angola, Ethiopia, Botswana (the earliest in 1968), Malawi, Ghana, Tanzania (1999) and Uganda (1995, 1998) represent the most comprehensive reforms in this regard. The most recent development has been in Liberia where the entire forest resource including as gazetted National Forests and Wildlife Reserves has been legally acknowledged as community property (2008), greatly altering the way in which it will be commercially harvested in future and revenue shared.

Sources: Alden Wily passim.