

Nepal

Land Conflict Monitoring Report¹

By Community Self-Reliance Centre (CSRC)

INTRODUCTION

Land has become one of the most contested natural resources in Nepal over the last few decades. Since it has high material value and is directly related to social, economic and political power, land is a common source of conflict within families, within and among communities, and between communities and the State. An escalation of land prices over the past few decades, population growth, combined with a lack of land use plans and the inheritance law (which makes children automatic heirs of parents, with each child getting a portion of the parental property), led to fragmentation of land. This has, in turn, put increased pressure on a fixed stock of land, leading to an increase in the number of land-related conflicts (IOM, 2016).

Study objectives

This study aims to answer the following three questions:

- What is the nature and context of land and land- related conflicts in Nepal?
- What are the drivers and outcomes of land conflict?

¹ This is an abridged version of the paper “Land Conflict Monitoring Report, Nepal” prepared by the Community Self-Reliance Centre (CRSC) for the project “Defending Land Rights and Human Rights Defenders.” For more details, contact deujaj@csrcnepal.org

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- What kinds of conflict resolution mechanisms are in place? Which mechanism work and why?

Study methodology

Data for the study was gathered mainly through literature review and focus group discussions (FGDs). The literature review consisted of content analysis of the following main documents:

- Annual Report of the Supreme Court
- Land conflict reports in four major newspapers
- Reports from 12 CSRC District Land Rights Forums
- National Human Rights Commission reports
- Other published and unpublished reports from government and NGOs

A focus group discussion was conducted with government agency representatives, NGOs involved in land rights issues, media and other advocates and experts.

Limitations of the study

Firstly, the study covered only 12 districts and information was collected for a six-month period only. Even within 12 districts, it is possible that the study did not cover all the land related conflicts that occurred during the period.

Secondly, this study is heavily based on secondary sources of information. This is mainly because of the limited availability of information on the study subject.

OVERVIEW OF LAND AND RESOURCE CONFLICTS IN THE COUNTRY

Nature of the conflicts

In Nepal, the most common forms of land-related conflicts include conflict over boundaries and land demarcation, conflict between tenants and landlords, encroachment of public land, control of *guthi*² land and its revenues, land registration and cancellation, and conflict over inheritance (Sharma et al., 2014). Squatting, expropriation of land for infrastructure, and land reform issues, are other common causes of conflict.

In Nepal's case, informal tenure has been problematic in terms of securing the rights of cultivators and inhabitants. Informal tenure may or may not have

² *Guthi* refers to land allocated for religious purposes.

some legal basis and social recognition but it has no formal registration therefore the tenure is not fully recognized. This lack of clarity is another source of conflict.

Customary tenure in Nepal is dying. In this form of tenure, customary social institutions regulate the land use practices and decisions. Most of the shifting cultivators acquired their land rights through customary tenure. To some extent, this practice still endures among different ethnic groups, particularly in hilly regions. One example of customary tenure is *Kipat*, where a major criteria of land allocation is lineage or clan.

Recent developments/Emerging issues

The new Nepalese Constitution of 2015 and the Local Government Operation Act of 2017 have recognized the rights of agricultural workers and also granted autonomy to local governments, including authority to manage the land, water and forest resources under their jurisdiction. However, since Nepal is still in the process of State restructuring, most local government units are still unaware of the vast natural resources under their control, as well as the revenue that these can generate. Local governments also have the power to resolve land disputes, but do not have the trained personnel for this.

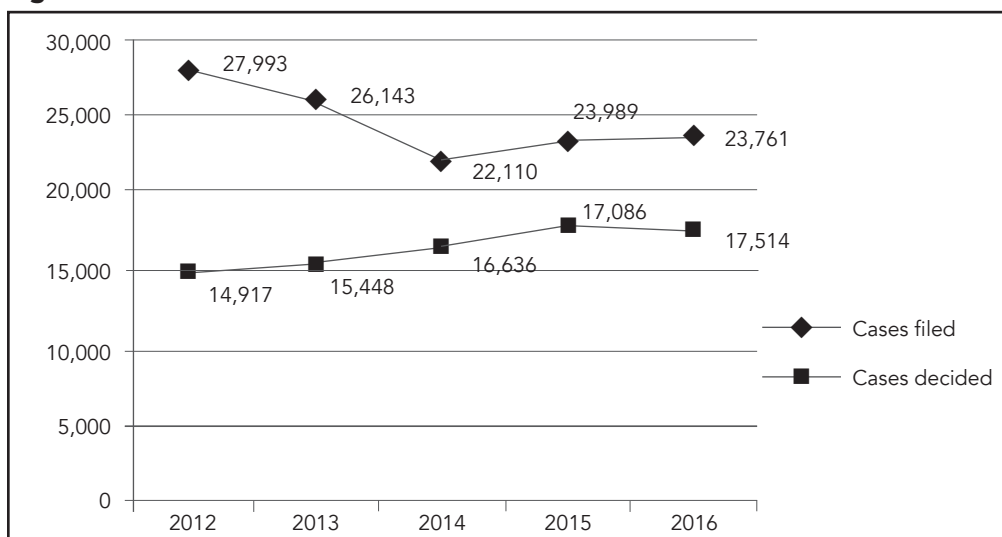
At the national level, a major source of conflict is the displacement of communities due to mega-development projects and the expansion of army camps. Another concern is the ongoing debate between the State and ethnic communities, who are demanding their right to continue customary land practices like *Kipat*, which have now been abolished.

Mapping conflicts

During the period 2012-2016, over twenty-thousand land-related cases were filed in various courts in the country. Around 70 percent of these cases have been decided. Compared to the years 2012 and 2013, the number of cases filed has been decreasing, as a result of increased land literacy among the people, as well as the expanded reach of mediation programs.

At the same period from 2012-2016, approximately one-fourth of all cases filed in Nepalese courts were land-related.

The courts are frequently criticized by the wider public for failing to deliver efficient and timely justice to ordinary citizens at reasonable cost. Hundreds of land-related cases languish in the courts for many years. Limited human resources, lack of a land tribunal, and the slow-paced hearing and decision-

Figure 1. Land cases in court

Source: The Annual Reports for 2012-2016 of the Supreme Court of Nepal

making process are reported as core reasons behind the inefficiency of the formal justice system in resolving land disputes.

As of 2017, more than 146,900 cases between landlords and tenants remain in land reform offices.

This six-month monitoring initiative further recorded the following:

- one conflict between a landless community and the army in one district;
- nine cases of eviction due to construction of large infrastructure projects in nine districts;
- 10 cases of land mafia titling of lands occupied by communities for over 20 years, in seven districts; and,
- Conflicts between three parks and nine local communities.

Implications

Given the major political changes in the country, the commencement of large commercial and infrastructure projects and the erosion of informal and customary tenure, rural communities have become worse-off in many ways. Landless and marginal land holders' families suffer from semi-feudal oppression, resulting in lack of land to work on and extreme poverty and hunger. Production and productivity has decreased, as productive lands remain either uncultivated or under-cultivated. This, among other things, results in unemployment or underemployment. Discrimination, injustice and debt bondage are prevalent. Given this situation, it is not surprising that violence is occurring at family, community, and State levels.

ANALYSIS OF LAND CONFLICTS

Drivers of land conflict

Land distribution in Nepal is still very uneven. Over half the country's population (53 percent) is comprised of smallholder farmers owning less than 0.5 hectare of land, which is not enough to support a family. Around 26.1 percent of agricultural households are ethnic minorities, indigenous people, and *Dalits*, that do not have land to farm on. These families are sharecroppers, tilling other people's land and paying very high rent, which ensures that they remain in poverty. *Dalits* own just one percent of Nepal's arable land, while only three percent of *Dalits* own more than a hectare of land. Households from 'low castes' are also landless: nearly 79 percent of the *Musahar*³ and 41 percent of Muslims are landless. *Terai Dalits* have the highest proportion (28 percent) of households solely dependent on rented-in land for agriculture. There are very few landless households in the hills, but size and quality of land varies significantly among caste and ethnic groups. Food self-sufficiency is much lower among the *Dalit* and *Janajati*⁴ groups.

At the heart of the problem is a government controlled by elites, and policymakers who do not understand the profound relationship that people have with their land.

Pressure from changing social, technological, and economic contexts (e.g., urbanization) is also a factor.

Historical roots of land conflict

Land has historically been a source of conflict in Nepal. Exclusion from land, and the denial of other socio-economic rights of large segments of society contributed to the escalation of conflict, beginning in the 1940s. Neither the Nepali Congress Party's short-lived victory and calls for land reform in 1959, nor the changes declared by the 1964 Land Reform Act did much to alleviate these pressures. As a result, peasant movements in the twentieth century focused on unfair rent policies and exploitation, sometimes leading to violent clashes with the government. The People's Movement (*Jana Andolan*) in 1990 and the installation of a multi-party constitutional democracy ushered in new hope for land reform, but this soon faded when it became clear that the promises would not be implemented.

³ *Dalit* is a Hindu scheduled caste found in the Terai region.

⁴ *Janajati* is an ethnic group living in the Kathmandu Valley.

From 1996 to 2006 the Maoist insurgency, which led to the end of the world's last Hindu kingdom, was a conflict for control over land and resources. In the aftermath of the conflict, the Interim Constitution provides the most robust human rights protections to date in Nepal. Land reform remains on the agenda, but the highly politicized nature of the debate has thus far impeded any real change.

LAND CONFLICT RESOLUTION MECHANISMS

Formal and informal mechanisms

A number of formal and informal mechanisms are available for resolving land-related conflicts in Nepal. The formal mechanisms are those that must follow official procedures and are guided by government rules, regulations and laws. The formal mechanisms are further subdivided into two categories. The first is the court system and the second includes quasi-judicial organizations such as government offices concerned with resources, police, and local administration. The formal mechanisms are generally slow, taking up to five years, and pursuing cases require significant financial resources (Upreti, 2004).

There are other practices of resolving land conflicts beyond the formal justice system, particularly through the local governments, which began during the *Panchayat* system. For example, Village Panchayat Act 2018 BS (1962 AD) with amendments 2021 BS (1965 AD) and 2035 BS (1978 AD), gave authority to local governments to resolve disputes related to public land, boundaries, wages, trespassing, sources of water and pasture land and collection of grass and firewood. Unfortunately, local governments were not effective in this role because the elected officials of the system fueled socioeconomic and political conflict, perpetuated feudalism and failed to work for the poor (Khanal, 2003).

Mediation is a form of Alternate Dispute Resolution (ADR) and serves as a complementary mechanism to the formal and informal dispute resolution mechanisms. It allows the disputants to select a panel of trained mediators available in the community who will provide a neutral and confidential venue for dialogue between the parties. In this sense, community mediation programs are considered as a democratic forum for resolving disputes. These programs started in Nepal as an intervention targeting those who could not easily access the formal justice system. Community mediation programs have helped reduce the frequency of disputes in targeted communities and have helped improve understanding, coordination and cooperation among community members.

Despite the availability of various dispute resolution mechanisms, there are difficulties in getting justice to those who are poor or small farmers, as they

have no access to or understanding of the court and land administration systems (FAO, 2010). Field interviews indicate that poor people and small farmers have limited knowledge with regards to approaching the courts or land offices for conflict resolution and protection of rights. The poor are also unable to initiate dialogue with the landowners, for fear of being evicted from the land which they have been cultivating for a long period of time. In sum, lack of confidence among poor people and small farmers inhibits them from making use of State institutions or initiating negotiations with landowners.

Finally, a number of land conflicts in Nepal are highly political in nature and thus demand political solutions. However, due to lack of political consensus and willingness to find inclusive solutions, political actors have failed to resolve a number of land issues, particularly those related to land reform at the national political level and a number of politically linked and politically motivated land conflicts at the local level.

Gaps in dealing with land conflicts

The major challenge in land conflict management in Nepal is the inadequate institutional and financial capacity of the government. This manifests itself in, among other issues, insufficient and unskilled human resources. It is also seen in the backlog of land-related cases in the courts. Lack of coordination and collaboration among government agencies is also a problem.

RECOMMENDATIONS

Land conflict, water insecurity, and food insecurity are closely interlinked and therefore, a holistic response is required. Improvement in resource governance can minimize land conflict. The following recommendations are provided in order to resolve protracted land issues and minimize land-related conflicts in Nepal:

- Full implementation of the 2015 Constitution of Nepal which include the pro-poor and gender responsive provisions, and guarantees of equal rights for *Dalits*, peasants, women and the landless.
- Crafting of a new “National Land Policy” that not only treats land as a mere economic asset, but also recognizes its socio-cultural aspects and protects tenure accordingly.
- Based on the new Constitution, expansion of the powers of provincial and local governments to formulate and implement locally appropriate policies and programs related to land use and tenure. The policy makers in the central government have to realize that “one size does not fit all.”
- Policy recognition of the tenure diversity in the country. Some tenure systems are not properly documented, recognized and protected.

- Amendment of the Land Related Act 1964 to include provisions aimed at ending the remaining cases of dual ownership in Nepal. The Act should include provisions for the recognition of unregistered tenants and protect them against forced eviction. This will be instrumental in addressing the land-related conflicts between the landlords and the tenants.
- Hastening of the adoption of legislation for effective implementation of land use policies. The lack of land use plans in the country is causing haphazard urban sprawl, fragmentation of agricultural areas, reduced agricultural productivity and food security, and conflict between different groups and communities.
- Government review of all three reports developed by the High-Level Land Reform Commissions formed in the past. Furthermore, government should conduct consultations with the poor and vulnerable communities of Nepal to solicit their views and concerns and ensure that future land reform protects their rights over land as well as boosts agricultural productivity and economic development in the country.
- Training on conflict sensitive approaches, ADR and gender sensitivity for government staff working at the district land offices. There is a need to enhance their capacity to deal with the growing number of local level land-related disputes and conflicts.
- Conduct of outreach programs to educate the affected communities, particularly women and vulnerable groups, regarding their entitlements to and rights over land.
- Establishment of Land Tribunals to deal with the backlog of cases at the courts. This will contribute to the swift resolution of land-related conflicts.
- Development of mechanisms for the establishment of mediation centers throughout the country. Awareness campaigns should be conducted to inform the communities that most of the civil cases, including land-related conflicts can be settled through mediation.
- Establishment of an electronic cadastral and land registration system in the country.
- Capacity enhancement of Local Judicial Committee. ○

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LIST OF ACRONYMS

ADR	alternative dispute resolution
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
CSRC	Community Self-Reliance Centre
DoLRM	Department of Land Reform and Management
FGD	focus group discussion
NGO	non-government organization
NLRF	National Land Rights Forum

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