

# Government and Public Land Management in Nepal

Babu Ram ACHARYA, Nepal

## ABSTRACT

Most of the rural population in Nepal is engaged in subsistence farming. There is a high rate of migration of poor landless people from the mountains to the plains and the rural to the urban in search of better land for farming and better job for livelihood. This has resulted in heavy encroachment on government and public land. There are several legal arrangements for the preservation and management of government and public land, but the lack of a comprehensive land policy, an integrated land act, and a responsible bureau for their preservation and management has resulted in their continuous depletion. A recommendation is made for a better management of government and public land in Nepal.

## 1. BACKGROUND

Nepal is a small mountainous landlocked country in South Asia located between latitudes 26°22'N to 30°27'N and longitudes 80°04'E to 88°12'E and lying between India and China. It has an area of 147,181 square kilometers and a population of 23.4 million inhabitants. It has a rich human culture and natural biodiversity with more than 61 ethnic groups and 70 spoken languages. Nepal- occupying only 0.1% of the earth- is home to 2% of all flowering plants in the world, 8% of all the world's population of birds (more than 848 species), 4% of mammals on earth, 11 of the world's 15 families of butterflies (more than 500 species), 600 indigenous plant families, and 319 species of exotic orchids. However, economically the situation is not that encouraging. The per capita income in Nepal is a mere US\$ 240. Worst of all, the single indicator showing the condition of people in Nepal is the number of population living under the poverty line, which is 38% (NTB, 2002). 30.7% of the population is engaged in own agriculture work (SD&CBS, 2004), meaning subsistence farming, for their livelihood. The country is composed of five physiographic regions: the Terai (or the plains with a minimum altitude of 68m), The Siwaliks, the Middle Mountains, the High Mountains and the Himalayas (with a maximum height of 8848m). Most of the fertile agricultural lands lie in the Terai plains and the river valleys in the Siwaliks and the middle mountains. Also these regions have a heavier economic and development activities with all most all the road network lying in those areas and also a home to all the 58 major urban centers (municipalities and sub-municipalities) in the country. It is therefore natural that there is heavy population pressure on these areas. A natural consequence is the growth on migration of poor and landless from the higher and less fertile rural mountains to the more fertile plains and urban centers in search of land for tilling and job for livelihood. This results in encroachment on government and public land and the growth of slums. Protection of government and public land to safeguard environment, natural habitat and mitigation of natural disasters like climate change, floods and land slide etc is currently a prime challenge to land management in Nepal.

## **2. LEGAL PROVISIONS ON RECORDING AND PROTECTION AND GOVERNMENT AND PUBLIC LAND AND CHALLENGES**

In Nepal, government and public land is defined as following- Law Books Management Committee (LBMC/GoN 1963). By "Government land" is meant road, path, railway, and land housing government building or construction; and this word also denotes forest, shrubs, rivers, rivulets, land abandoned by river, lakes ponds and their banks, canal, water channels, unregistered land, uncultivated land, un-used land-slopes, sands and other lands specifically denoted so by Government of Nepal through publication in the Nepal Gazette. By "Public land" is meant land allocated for use not only by individual but by general public like path, pond, water-sprout, well and their banks, exit for cattle, grazing-land, graveyard, public inn, temple, place for religious practice, memorials, court-yard, sewerage, market-place, public entertainment and sports ground and other lands specifically denoted so by Government of Nepal through publication in the Nepal Gazette.

Thus government land can be basically classified into two categories: government land owned by particular government entity like government building complex etc, and government land owned by government in general like forest, unregistered/ uncultivated land etc. Regarding public land they are not owned by any individual or institution and are denoted as public land in the land registers. The responsibility for the maintenance of inventory and protection of public land is the responsibility of the local unit e.g. the respective Village Development Committee (VDC) or the respective Municipality and the District Development Committee (DDC). Clauses 25 (c) and 93(a) of Local Self-Governance Act 1999 mention one the functions and duties of the local Ward Committee "to assist the VDC/ Municipality in keeping inventory of, and in protecting, population, houses, land, rest houses, shelters, inns, temples, shrines, hermitages, monasteries, mosques, madarsa, divine, places, barren land, ponds, wells, lakes, deep water, canals, taps, stone water taps etc" within their areas. Clause 189(e) of the same Act is more pronounced and it mentions one of the functions and duties of District Development Committee relating to land reforms and management "to protect and promote the unregistered land and government barren land situated within the district development area" (LBMC/GoN, 1999).

Land Revenue Act 1977 categorically restricts from registering the government and public land in the name of individuals. In case of such land being registered in the name of individuals before or after the enactment of this law shall automatically be invalid. It also provides for maintaining the record of government and public land. The third amendment of 1998 of Land Revenue Regulations 1979 has made the related district Land Revenue Office responsible for the protection of the government and public land. Article 22A has the mandatory provision that the Land Revenue Office should register the government and public land under its area and keep its record update in the prescribed schedules. It states that the conservation and protection of such recorded government and public land shall be the responsibility of the related Land Revenue Office. (DOLRM/GoN, 2001).

During cadastral survey and re-survey, the surveyors should pay special attention to the registration of government and public land in the name of government. During adjudication of land boundary it is necessary that the government and public land and its boundary are first identified. All government and public land should be registered in the name of “Government of Nepal” and land ownership certificate provided to the concerned government office in case of the land under its direct use, and to the concerned District Administration Office in case of other government and public land (Acharya, 2006).

The conservation, protection and custodianship of the government land as the forests and the national parks and wildlife reserves are outlined in the Forests Act 1982. No land within the national forest may be registered in the name of individuals. Even if they are registered, they will be automatically invalid. (LBMC/GoN, 1982)

The local Chief District Officer (CDO) also has an important role in the protection of government and public land. As per clauses 9 and 10a of Local Administration Act 1971, the CDO can order demolition of houses constructed by unauthorized persons in the government and public land and fine up to an amount of NRs 5000. Nobody can cultivate government and public land without proper government authority. In case of cultivating or providing unlawful authority for their cultivation, the CDO can award a jail term of three months. The CDO should maintain the record of government and public land under his jurisdiction and provide a copy to the related Land Revenue Office and the District Development Committee’s Office (LBMC/GoN, 1971).

The above shows that, in Nepal, many different organizations and authorities have been entrusted with the legal responsibility for maintaining the records and protection of government and public land, and in most of the cases the responsibilities are overlapping. These are the real challenges since it can be easily understood that everybody’s work is nobody’s work. Due to such ambiguity, it can be clearly understood that the work has not been very effective. However, since the related district Land Revenue Office is the authority for maintaining records of all kinds of lands, and the Land Revenue Office and the Survey Goswara are responsible organizations for land registration, they can not escape from maintaining the updated records and thereby providing security of the government and public land. Out of 75 districts in Nepal, the inventory of the government and public land of 15 districts are published in book form for general public use and rest will be published within one year (Acharya, 2006). With respect to physical security of the forests and the national parks and the wildlife reserves related government departments are established. However, for other government and public land (except under direct use of concerned government entity) no custodian department is specifically made responsible. Legally, both the District Administration Office and the related Land Revenue Office have responsibility for their protection.

### **3. ENCROACHMENT ON GOVERNMENT AND PUBLIC LAND AND CHALLENGES TO THEIR PROTECTION**

Despite all legal provisions for the maintenance of records of government and public land and their protection, there is a continuous encroachment on public and private land in Nepal and their areas are under continuous depletion. Effective and sustainable land management is still lacking. Many parts of the forests are being cleared, many banks of the rivers are being turned into slums, banks of the highways and other roads are being turned into settlements and markets and many cultivable public and government lands are being turned into farmlands. There are many reasons for such illegal encroachments on government and public land. Some of the major reasons can be categorized as following.

- Poverty, landlessness and search for better income
- Conflict and displacement
- Open border and immigration of foreign poor
- Political instability and lawlessness
- Legal loopholes
- Lack of political will and policy stability
- Lack of public awareness
- Ambiguity of responsibility and custodianship

As in many other developing countries there is a continuous tendency of rural population to shift from rural to urban areas in search for better income. In the Nepalese context, there is also a strong tendency of migration from rural to urban areas. The tendency is therefore to move from the extreme rural areas to local bazaar areas, to local towns, to district headquarters (town/ city) and ultimately to the capital city to look for work and better wage. Most of the population is engaged in subsistence farming. Most of the fertile lands for farming are situated in the terai (plain lands) and the river valleys in the Siwaliks and the middle mountains of the countries. It is therefore observed that farmers move to lower mountains and ultimately to the fertile plains of the terai. With the little money they have, they can not afford suitable size of the farm for their livelihood and therefore start encroachment on government and public land. Similarly the heavy flow of rural poor has increased slums and encroachment on public land like the banks of the rivers etc.

The twelve-year long conflict (1994-2006) in the country has also contributed in this encroachment process. The displacement of people and immigration from remote part of the country to terai and urban areas where there was relatively higher presence of the state was seen. Although no official data is available for such displacement and immigration. It is natural that this contributes to higher pressure on the government and public land.

Nepal has an open border with Bihar, Utter Pradesh and Bengal provinces of India. Coincidentally, these provinces in India are the most heavily populated provinces and also home to the most poor in India. It is therefore natural that there is a heavy influx of foreign poors in the terai and urban areas in Nepal.

Nepal has gone through political instability since many decades. There is seen a distinct lack of law-enforcement. The constitutions have gone changes for at least six times during the last sixty years. The current interim constitution is undergoing its fifth amendment within a little more than one year of its existence. Due to such frequent political changes in the country people do not show adequate respect to the law. Moreover, people tend to put the government responsible for all their problems, and want to take law in their own hands. This has multiplied the encroachment on the government and public property to for their interest.

We could as well see some legal loopholes for encroachment on government and public land. In the absence of strong legal body to stop them, wrong and non-law-abiding people intend to encroach upon government and public land. The provision of hal-aaadi and the correction of cadastral maps and land records in case of discrepancy between map/record and actuality on the ground provide room for legalizing the unlawful encroachment on government and public land.

Another very strong reason for encroachment on government and public land is the lack of political will and policy stability on how to deal with landlessness, ex-kamaiya (ex-bonded labour) problem, environment protection etc. The different governments from the panchayat era (political system before 1991) till today have not been able to form sustainable policy on dealing with the problem of landless farmers and the ex-kamaiyas. As immediate response to the agitation of the landless farmers, ex-kamaiyas and the pressure from their local party cadres, different governments in the past have constituted land-reform commissions and entrusted them with legalizing the encroachment on government and public land in the name of solving the problem. Instead of providing the landless farmers access to alternate source of income, the governments in the past have always considered that allocation of few land for subsistence farming will solve their problems.

The Nepalese society is very much politically motivated. Most of the citizens, civil society and even the non-governmental organizations (NGOs) take too much attention on major political issues of the country. But adequate concern for environmental issues and the protection of the government and public land is not seen in their agenda. In the present days, some NGOs are advocating on land reform issues but their attention on land management and protection of government and public land is not felt adequate.

Duplication of responsibility, more focus on maintenance of records rather than physical maintenance, protection and overall management of government and public land was the focus of the discussions in the last chapter. The Forest Department and the Department of National Parks and Wildlife Reserves have been entrusted with the protection and maintenance of the national forests and the national parks and wildlife reserves. Experience has shown that their organizational structure, particularly the structure of Forest Department, is far from adequate and they have not been able to reach the grassroots. The community forestry programmes have been very successful in protecting them. However, in many other national forests neither adequate boundary adjudication/demarcation nor their protection has

been possible. For other government and public land no custodian organization for their maintenance and protection is entrusted.

#### **4. CONCLUSIONS**

There are several reasons for the encroachment of government and public land in Nepal and the problem for their protection, maintenance and overall management of land. Ministry of Land Reform and Management as the key government organization responsible for policy formulation and guidance has a role to play in this respect. There are internal and external factors for their performance. As a step forward it is necessary that the ministry takes steps to make available reliable and transparent records of government and public land to citizens, NGOs and other governmental organizations. It is also important that an integrated land act be formulated and duplication of responsibility avoided. A clear distinction should be made between the custodian and the support for collection, updating and maintenance of government and public land records. It is also necessary that a structural re-organization be made to constitute a Department of Government and Public Land under the Ministry of Land Reform and Management to maintain and update not only the records of such lands but also to oversee that no encroachments on such lands are made and they are maintained physically as well. These initiatives have already been undertaken. District-wise inventory books of government and public land are under publication. A study for organization restructuring is under process. Surveyor's license have been issued arranging for the incorporation of private Surveyors in the maintenance of land records and developing parcel maps with adjudication and description of land parcels with exact dimensions. Land administration is also proposed to be devolved in the local or district level in near future. It is hoped that, after these interventions and reforms, Nepal will have a better picture in avoiding encroachments and maintaining and protecting government and public lands.

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## **CONTACTS**

Babu Ram Acharya  
Ministry of Land Reform and Management  
Kathmandu  
NEPAL  
Email: lamachourbabu@yahoo.com