Statutory Versus Locally Existing Land Tenure Typology

A Dilemma for Good Land Governance in Nepal

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Nepal Location and Topography:
On the lap of Himalayas; Mountain and rugged hills (75%)

Land Cover:
Forests coverage (41.9%); Arable land (27.3%)

Nepal Ancient History:
Legends date back to 30th Century BC
Kirat Dynasty: 8th Century BC to 4th Century AD
Lichhavi Dynasty: 4th Century till 12th Century
Malla Dynasty: 12th Century till 18th Century

Nepal Modern History:
Shah Dynasty:
Unification process 1743 & Founding of modern Nepal 1768
Treaty of Sugaulee: 1816
Rana Oligarchy: 1846
Democracy: 1951
Panchayat System: 1961
Restoration of democracy: 1989
Armed Conflict: 1996-2006
Federal Democratic Republic: 2008
Gorkha Mega-Earthquake: 2015
Constitution of Nepal: 2015

Political History has a relationship with the history of evolution of land tenure in Nepal
Land Administration evolved through a feudal culture. History dates back to 5th Century Lichchavi King Manadeva.

- Land Reform programme of 1961 has not been able to deliver
- Land and tenure issues as one of the triggers of social and political conflict
- National Land Policy was proposed to be formulated
- Need for study and documentation of all tenure typology to informed land policy formulation
STUDY METHODOLOGY

- Literature Study
- Primary Data Collection
- Coverage 5 out of 7 provinces
- Methodology
  - Key Informant Interviews
  - FGDs
  - Informal Conversations
  - Expert Observations
Historically till 1951: State the key landlord; Feudalism

- State will grant land on rent to the farmers (Raikar tenure)
- Rulers will grant Raikar land to their favorites (Birta tenure) or emolument to soldiers and civil servants (Jagir and Rakam tenure)
- State or Birta holders will gift land to maintain temples and other philanthropic use
- Birta- and Guthi-holders will let land for peasants on different tenure arrangements for agriculture (Evolution of tenancy, Bonded labour etc)

**Birta** tenure system: Evolution of private landlords

**Guthi** tenure system: Evolution of temples as landlords

Some ethnic community held community land (Kipat tenure)

In 1951:

*Raikar (94%), Guthi (2%) and Kipat (4%)*
Towards abolition of feudalism (major events)

- Abolition of Jagir tenure system (1951)
- Abolition of Birta tenure system (1959)
- De-legalization customary tenure system and land tenure reorganization (1962)
- Statutory land tenure include Raikar (redefined as freehold), Guthi (Trust), Sarkari (Government) and Sarbaajik (Public use)
- Systematic land titling starts (1963)
- Land Reform Program launched (1964)
- Abolition of Kamaiya bonded labour system (2000)
- Abolition of Haliya bonded labour system (2008)
• 25% of cultivable land still out of formal cadaster
• 45% of rural farmers are landless or near-landless operating less than 0.5 ha of land
• Nearly 500,000 families
• No clear distinction between encroachment and informal tenure
• Beyond Statutory land tenure system, remnants of traditional feudal and customary tenure system locally existing, major classification based on
  - Ownership pattern
  - Farming/ Cultivation contract
  - Institutional contract
  - Customary and collective tenureship, etc
• Some cases of Community leaders holding land administration
• Land issues as one of the triggers of armed conflict (1996-2006)
• High Level Land Reform Commission reports 1995, 2010, 2011 highlight policy reforms
## FINDING (4): SUMMARY OF EXISTING TENURE TYPOLOGY

### Land Tenure System

<table>
<thead>
<tr>
<th>Registered/Statutory</th>
<th>Unregistered/Non-statutory</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>State</strong></td>
<td><strong>Guthi</strong></td>
</tr>
<tr>
<td>Public</td>
<td>Trust land</td>
</tr>
<tr>
<td><strong>Raika</strong></td>
<td></td>
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<tr>
<td>Private land</td>
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</tbody>
</table>

#### Land Tenure Type

- **Registered/Statutory:**
  - State (Public)
  - Raika (Private land)

- **Unregistered/Non-statutory:**
  - In-formal
  - Encroachment

#### Encroachment

- Socially accepted
- Legally recognized
- Unregistered

- Socially accepted
- Legally not recognized
- Unregistered

- Socially not accepted
- Legally not recognized
- Unregistered

#### Customary

- Socially accepted but not legally unaccepted

- Socially accepted but not legally recognized

- Socially not accepted but no Title

- Registered and has Title

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Estimated 25% of arable land and 10 Million physical parcels on the ground occupied by 1.3 Million families are considered Non-Statutory and out of formal cadaster.

Non-recognition of such locally existing land tenure is a dilemma for good land governance.

Need for addressing in the National Land Policy.
This study informed National Land Policy drafting.

On March 21, 2019 Government of Nepal adopted the National Land Policy which commits to access to land, and recognition and security of all types of tenure among others.

A Fit-For-Purpose Land Administration Strategy was recommended for the implementation of the land policy.
THANK YOU

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