



# NEPAL: LAND FOR LANDLESS PEASANTS

COMMENTS AND RECOMMENDATIONS ON AMENDMENT TO THE LANDS ACT 1964



**Amnesty International Nepal (AI Nepal)** is the Nepal section of Amnesty International which is a global movement of more than 7 million people who campaign for a world in where human rights are enjoyed by all. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other International human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

**Community Self Reliance Centre (CSRC-Nepal)** is a national land rights organization, committed to social transformation through non-violent social movement. CSRC has a long-standing history of struggle and a very rich tradition of working with land-deprived people, especially tenants and landless poor farmers. CSRC envisions to empower land-poor women and men enabling them to claim and exercise their basic rights, including right to land resources, contributing to eradicating poverty and injustice. CSRC's engagement in land rights began from Sindhupalchok district in 1993 and now has grown into a full-fledged national movement providing direct advocacy support to over 59,793 peasants enabling them to access 6,474 hectares of land. CSRC has also organised over a hundred thousand landless peasants in the land rights forum.

**Justice and Rights Institute-Nepal (JuRI-Nepal)** responds to a wide range of human rights concerns upholding the principles of human rights, cherishing values of diversity and inclusion and advocating for zero-tolerance of any type of violence and discrimination. JuRI-Nepal is independent of any political influence and corporate interests. Combating impunity for human rights violations and tackling long-standing discrimination, inequality and gender-based violence (GBV) are among the key priorities of JuRI-Nepal. JuRI-Nepal has been working on four key strategic priorities i.e. economic, social and cultural Rights and social justice; access to Justice; rule of law and transitional justice; federalism, human rights and inclusion.

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First published in 2019  
Kathmandu, Nepal

**Cover photo:** Dang, Nepal. Farmers digging barren land for cultivation. © CSRC

**Index:** ASA 31/1221/2019



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# 1. OVERVIEW

The Lands Act 1964 was the first comprehensive piece of legislation which came into existence to pave the way for land reform. Key objectives of the Act were a) enhancing the standard of living of people dependent on land including through ensuring “equitable distribution of agricultural land”; and b) securing rapid economic development and wellbeing of the general population through attaining optimum agricultural growth.<sup>1</sup>

To turn these objectives into a reality, the Lands Act introduced several important measures including the ceiling on landholdings,<sup>2</sup> protection of tenancy,<sup>3</sup> fixing of rents to the landowner at 50% of the principal crops,<sup>4</sup> abolition of a system of intermediary tax collectors (the *Jimidari* system)<sup>5</sup> and a compulsory saving scheme<sup>6</sup> with a view to generate capital for investment in rural areas.<sup>7</sup> The Act also provisioned for acquiring land in excess of the ceiling from landlords and the sale or distribute of such land as prescribed.<sup>8</sup> Subsequently, the Lands Rules 1964 prioritized a landless household or a tenant who cultivates the land below the ceiling prescribed for the tenanted land were prioritized in terms of the sale or distribution.<sup>9</sup> A provision introduced by the Fifth Amendment to the Act provided for the sale or distribution of such land to local landless people with a priority given to freed bonded labourers, Dalits and Indigenous nationalities.<sup>10</sup>

However, the very purpose of the “equitable distribution of agricultural land” was defeated largely because of the lack of an explicit statutory obligation towards acquiring and redistributing the agricultural land and the poor implementation of the prevalent provisions oriented towards the redistribution. Most of the landlords succeeded in bypassing the ceiling provisions and bringing their holdings to just below the ceiling through sale or transfer of lands to close friends and

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<sup>1</sup> Preamble of the Lands Act 1964.

<sup>2</sup> As per the Fifth Amendment of the Act, the applicable land ceiling under Section 7 is 3.75 ha in all hill and mountain areas, 1.5 ha in the Kathmandu Valley and 7.43 ha in the Terai.

<sup>3</sup> Lands Act 1964, Chapter 7. Section 25(1) reads, “A person who as a tenant has been cultivating a land that belongs to any landowner until the date of the commencement of this Section shall acquire the tenancy right as referred to in this Chapter in respect of the land.”

<sup>4</sup> Lands Act 1964, Chapter 8. As provided under Section 33, “No landowner shall charge rent or collect division thereof from the tenant in excess of fifty percent of the main annual crop yielded of the land.”

<sup>5</sup> Lands Act 1964, Chapter 3. Section 3 reads, “Jimidari is hereby abolished. As a result of such abolition, all the rights and authorities of the agents related with the Jimidari in the concerned area (Mouja) are ipso facto abolished. Provided that, in the case of land held by the Jimidari, such land shall be registered as Numbari (Raikar land) in the name of the concerned Jimidar as a landowner.”

<sup>6</sup> Lands Act 1964, Chapter 9. Section 40 reads, “Every landowner or every tenant shall deposit, or cause to be deposited, with the prescribed committee or association or authority the compulsory saving in kind at the prescribed rate of one main annual crop yield of the land that he/she owns or tills.”

<sup>7</sup> Also, see E. Wickeri, “‘Land is life, land is power’: Landlessness, exclusion, and deprivation in Nepal”, *Fordham International Law Journal*, Volume 34, Issue 4, 2011, p. 956. Available at: <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2295&context=ilj>

<sup>8</sup> Lands Act 1964, Section 21.

<sup>9</sup> Lands Rules 1964, Clause 23(1).

<sup>10</sup> Lands Act 1964, Section 21. Updated by the Lands (Fifth Amendment) Act, 2058 (2002). Amended, Section 21(1) reads: “The prescribed authority shall sell or dispose of, as prescribed, the land acquired or confiscated pursuant to this Act to a local person of that Village Development Committee or Municipality from which that land has been acquired or confiscated. In making such sale or disposal, priority shall be given to the freed bonded labor, downtrodden (dalit), indigenous and nationalities (janajati), out of the local landless people.”

relatives.<sup>11</sup> Land reform to ensure access to land for those who are real cultivators of land therefore continues to remain as an ideal rather than a reality. Only recently, the Supreme Court of Nepal, in response to a public interest litigation,<sup>12</sup> has directed the government to enforce the provisions providing for the creation of an inventory of the land holdings exceeding the legal limit, acquiring the excess land, and redistribution of the same as introduced by the Fifth Amendment. The written text of the judgment is yet to come out. Reacting to the decision, the public interest petitioner advocate Madhav Kumar Basnet expressed his hope that the authorities would take the court order seriously and act for implementation of the provisions.<sup>13</sup>



A farmer cultivating land. Sindhupalchok, Nepal © CSRC

Following the promulgation of the new Constitution in 2015,<sup>14</sup> the Government of Nepal amended the Lands Act 1964 through enacting a Lands (Seventh Amendment) Act in 2018. With the endorsement of the President of Nepal, the amendment came in force on 18 September 2018. The purpose of the Seventh Amendment was limited to providing a legal framework for implementation of Article 40(5) of the Constitution of Nepal (2015) that requires the state to provide land to landless Dalits.<sup>15</sup> Subsequently, the Government of Nepal has also introduced a Bill in the Parliament for an eighth amendment to the Lands Act,<sup>16</sup> which, among others, aims at providing ownership of land for “landless squatters”<sup>17</sup> and “unmanaged dwellers”.<sup>18</sup> The Eighth Amendment Bill was already considered and endorsed by both Houses—the House of Representatives<sup>19</sup> and the National Assembly.<sup>20</sup> The Bill at the time of writing this briefing was

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<sup>11</sup> For details, see UN Food and Agriculture Organization, *Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal*, 2014, p. 73, [www.fao.org/right-to-food/resources/resources-detail/en/c/253864/](http://www.fao.org/right-to-food/resources/resources-detail/en/c/253864/) Also, see E. Wickeri, “‘Land is life, land is power’: Landlessness, exclusion, and deprivation in Nepal”, p. 959.

<sup>12</sup> *Madhav Basnet v. Government of Nepal, Ministry of Land Reform and Others*, court order dated 17 July 8 August 2009.

<sup>13</sup> Telephone conversation dated 13 September 2019.

<sup>14</sup> Came in force on 20 September 2015.

<sup>15</sup> The Constitution of Nepal adopted by the Constituent Assembly in 2015 incorporates a standalone Article “Rights of Dalit”, which reads as follows: “(1) The Dalit shall have the right to participate in all bodies of the State based on the principle of proportional inclusion. Special provision shall be made by law for the empowerment, representation and participation of the Dalit community in public services as well as other sectors of employment. (2) Provision of free education with scholarship, from primary to higher education, shall be made by law (24) for the Dalit students. Special provision shall be made by law for the Dalit in technical and vocational education. (3) Special provision shall be made by law to provide health and social security to the Dalit community. (4) The Dalit community shall have the right to use, protect and develop their traditional occupation, knowledge, skill and technology. The State shall accord priority to the Dalit community in modern business related with their traditional occupation and provide skills and resources required therefor. (5) The State shall once provide land to the landless Dalit in accordance with law. (6) The State shall, in accordance with law, arrange settlement for the Dalit who do not have housing. (7) The facilities conferred by this Article to the Dalit community must be distributed in a just manner so that the Dalit women, men and Dalit in all communities can obtain such facilities proportionately.”

<sup>16</sup> Registered on 13 March 2019 and in the House of Representatives on 21 June 2019.

<sup>17</sup> As proposed under Section 52B(13)(a) of the Bill, “Landless dweller” is defined to include “the individual and members of the family dependent on him/her who or his/her family never had any land since generations under their ownership and is unable to manage land through his/her or their family’s source of income, sources or efforts.”

<sup>18</sup> As proposed under Section 52B(13)(b) of the Bill, “unmanaged dwellers” is defined as “the individuals and the members of the family depending on him/her who have a registered private land in his/her or their family ownership within the State of Nepal and is living by building a house, tent in government unregistered, unused or forest land.”

<sup>19</sup> Endorsed dated 19 September 2019.

<sup>20</sup> Endorsed dated 18 September 2019.

awaiting its authentication by the President.

Amnesty International Nepal, Community Self-Reliance Centre (CSRC) and Justice and Rights Institute-Nepal (JuRI-Nepal) recognize the Seventh Amendment of the Lands Act and the passage of a bill in the Parliament for the eighth amendment of the Act as an important step towards addressing the landlessness among the Dalit and other communities who have been marginalized and discriminated against. Overall, 26.1% of agricultural households in Nepal do not have land to farm on.<sup>21</sup> Only 19.71% of women have ownership of land.<sup>22</sup> Landlessness among Dalits is very high. It is at 36.7% among the hill population, 41.4% among *Madhesi* Dalit and those that do hold land have very small landholdings.<sup>23</sup> As 5% of the population controls 37% of arable land,<sup>24</sup> the concentration of land in the hands of a few is also high.

Amnesty International Nepal, CSRC and JuRI-Nepal echo the concerns raised by a group of civil society organizations in Nepal, in their submission to the Ministry of Law dated 11 December 2018, that the Seventh Amendment is inadequate to provide a robust legal basis for providing land to landless Dalits.<sup>25</sup> Both the Act and the Bill fall short in terms of defining landlessness, determining entitlements and setting the criteria for providing ownership of land for those dependent on land.

A consultation meeting of a group of civil society organizations held in May 2019 assessed the proposed eighth amendment and expressed concern over the government's segmental and piecemeal approach to addressing the land issues.<sup>26</sup> This approach is contrary to the observations made by the 2010 High Level Scientific Land Reform Commission after assessing the past efforts made in the name of land reform.<sup>27</sup>

Amnesty International Nepal, CSRC and JuRI-Nepal are also concerned by the government's failure to enact or amend laws to address other constitutional promises (for example, land reform under Article 25 and access of peasants to cultivable land under Article 42) related to land under fundamental rights and the Directive Principles (mentioned below). Amnesty International Nepal, CSRC and JuRI-Nepal thus underline the importance of further legal arrangements to fill in the legislative gap in terms of enhancing access to land for marginalized and disadvantaged groups including through fulfilling the longstanding commitment to land reform. To assist that process, the three organizations have prepared the following comments and recommendations.

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<sup>21</sup> Community Self-Reliance Centre: [www.csrcnepal.org/pages/details/csrc/issue](http://www.csrcnepal.org/pages/details/csrc/issue)

<sup>22</sup> SHE LAND: Her Land. Her Right. Her Choice. <https://sheland.org/2017/07/29/joint-ownership-of-land-strengthening-womens-land-rights-in-nepal/>

<sup>23</sup> Nepal's Civil Society Alternative Report submitted to the UN Committee on the Elimination of All Forms of Racial Discrimination in addition to the Government of Nepal periodic reports 17-23, February 2018, p. 14.

<sup>24</sup> B. Paudel et. al, *Fragmentation and conversion of agriculture land in Nepal and Land Use Policy 2012*, April 2013, p. 2, [https://mpr.ub.uni-muenchen.de/58880/1/MPRA\\_paper\\_58880.pdf](https://mpr.ub.uni-muenchen.de/58880/1/MPRA_paper_58880.pdf)

<sup>25</sup> On 11 December 2018, a group of civil society organizations submitted a memorandum containing their concerns and suggestions on recently enacted laws (Right to Food and Food Sovereignty Act, Right to Housing Act and Land (Seventh Amendment) Act) to the Minister for Law, Justice and Parliamentary Affairs, Honourable Baburam Dhakal, following an Interactive Workshop dated 1 November 2018 and an Expert Review Workshop on "Fundamental Rights Implementation Laws" dated 12-13 October 2018 jointly organized by JuRI-Nepal, CSRC, National Network on Economic, Social and Cultural Rights and Right to Food Network-Nepal.

<sup>26</sup> Dated 7 May 2019, Kathmandu. The organizations represented in the consultation meeting included CSRC, JuRI-Nepal, National Land Rights Forum, Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), Consortium for Land Research and Policy Dialogue (COLARP) and Amnesty International Nepal Section.

<sup>27</sup> Report of the High Level Scientific Land Reform Commission (2010), p.13.

## 2. CONSTITUTIONAL PROMISES PERTAINING TO ACCESS TO LAND

The commitment to land reform for ensuring access to land by cultivators remains an unaddressed agenda.<sup>28</sup> Though high-level land reform commissions<sup>29</sup> were formed one after another, their key recommendations towards carrying out land reform in an integrated way remain unimplemented.

The Constitution of Nepal contains threefold state obligations, which are interconnected, pertaining to access to land for those who are marginalized and discriminated against. First, recognizing the ill effects of longstanding caste-based discrimination and socioeconomic exclusion of Dalits, the Constitution obligates the state to provide land to landless Dalits.

The fundamental rights chapter of the Constitution, in Article 40(5), provides that “The State shall provide land on a one-off basis to the landless Dalits in accordance with law.” Given the importance of access to land in fulfilling the rights of communities who have been traditionally discriminated against in a largely agrarian society, Article 40(5) also contributes towards fulfilling the purpose of the right to live with dignity<sup>30</sup> under Article 16 and the right to substantive equality under Article 18.<sup>31</sup> However, to operationalize this right, there must be a legal definition of landless Dalits, a set of criteria to identify landless Dalit families, determination of the quantum of land necessary to protect landless Dalit families from hunger, poverty and vulnerability to human rights violations, and prescribed procedures for distribution of land.

The social justice clause under Article 42 together with “policies relating to social justice and inclusion” under Part 4 (Directive Principles, Policies and Obligations of the State)<sup>32</sup> contains a second set of obligations related to land. As guaranteed under Article 42(4), every peasant has the right to have access to lands for agricultural activities, the operationalization of which is also subject to legislative enactment. The state is also obligated under directive principles<sup>33</sup> “to identify the freed bonded labours, *Kamalari*,<sup>34</sup> *Haruwa*,<sup>35</sup> *Charuwa*,<sup>36</sup> tillers, landless, squatters”.<sup>37</sup>

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<sup>28</sup> Land reform was also a part of the peace agenda agreed upon under the Peace Agreement held between Government of Nepal and Communist Party of Nepal (Maoist), 22 November 2006: “3.7. To adopt the policy to implement scientific land reform program by ending feudalistic system of land holding.” “3.10. To adopt policy to provide land and other economic protection to landless squatters, Kamaia, Halia, Harwa, Charwa and economically backward section.”

<sup>29</sup> For example, High Level Land Reform Commission chaired by Keshav Prasad Badal (popularly known as “Badal Commission”) 1996; High Level Scientific Land Reform Commission chaired by Ghanendra Basnet 2010; High Level Scientific Land Reform Commission chaired by Haribol Gagurel 2011.

<sup>30</sup> Article 16(1) reads: “Every person shall have the right to live with dignity.”

<sup>31</sup> Article 18(3) reads: “The State shall not discriminate citizens on grounds of origin, religion, race, caste, tribe, sex, economic condition, language, region, ideology or on similar other grounds. Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or development of the citizens including the socially or culturally backward women, Dalit, indigenous people, indigenous nationalities, Madhesi, Tharu, Muslim, oppressed class, Pichhada class, minorities, the marginalized, farmers, labours, youths, children, senior citizens, gender and sexual minorities, persons with disabilities, persons in pregnancy, incapacitated or helpless, backward region and indigent Khas Arya. Explanation: For the purposes of this Part and Part 4, ‘indigent’ means a person who earns income less than that specified by the Federal law.”

<sup>32</sup> Article 50 and 51.

<sup>33</sup> Although the Directive Principles are not enforceable by courts, the Supreme Court has already recognized their linkages with fundamental rights and upheld their enforceability (see, *Yogi Naraharinath et al. v. Rt. Honourable Prime Minister Girija Prasad Koirala and Others* [1996] NKP p. 33).

<sup>34</sup> *Kamalari* is one of the forms of bonded labour that exist in far-western and mid-western parts of Nepal. In this system, girls from the Tharu community are employed as domestic workers by landlords. Such bonded girls in domestic servitude are called *Kamalaris*.

<sup>35</sup> *Haruwa* means “ploughman”.

<sup>36</sup> *Charuwa* means “cattle herder”.

<sup>37</sup> Article 51j(6).

Once identified, they are to be rehabilitated by providing “housing, housing plot for residence and cultivable land or employment for their livelihoods”.<sup>38</sup>

A third set of obligations relates to overall land reform that is deemed to create a conducive environment for the enjoyment of many (for example, rights relating to food, housing, work, social justice and the right to live with human dignity) of the economic, social and cultural rights guaranteed as fundamental rights. However, land reform remains a longstanding commitment of the State of Nepal.<sup>39</sup> Creating an exception to the right to property, Article 25(4) empowers the state to make “land reforms, management and regulation in accordance with law for the purposes of enhancement of produce and productivity of lands, modernization and commercialization of agriculture, environment protection and planned housing and urban development.” As elaborated under the Directive Principles, land reform should be carried out by protecting the interests of the farmers and ending the dual ownership (ownership of landlords as well as tenants) of lands,<sup>40</sup> enhancing produce and productivity, discouraging inactive land ownership and making proper use of lands.<sup>41</sup>

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<sup>38</sup> Article 51j(6).

<sup>39</sup> Constitution of the Kingdom of Nepal, 1990. Article 26(5) reads: “The State shall create conditions for the economic progress of the majority of the people, who are dependent on agriculture, by introducing measures which will help in raising productivity in the agricultural sector and develop the agricultural sector on the principles of industrial growth by launching land reform programmes.” Comprehensive Peace Accord signed between Nepal Government and the Communist Party of Nepal (Maoist) dated 22 November 2006. Clause 3.7 reads: “To adopt a policy of implementing a scientific land reforms program by ending feudal land ownership.” Clause 3.10 reads: “To adopt policy of providing land and other economic protection to socially and economically backward classes including land less squatters, bonded laborers and pastoral farmers.” Interim Constitution of Nepal, 2007, Right to Property Clause under Article 19 reads: “(3) Compensation shall be provided for any property requisitioned, acquired or encumbered by the State in the course of enforcing a scientific land reform program or in the public interest, in accordance with law. The amount and basis of compensation and the procedure therefor shall be as determined by law.” Article 33(f) reads: “To pursue a policy of implementing a scientific land reform program by doing away with the feudalistic land ownership.”

<sup>40</sup> Section 26D1 inserted in the Lands Act through its Fourth Amendment (1997) introduced a provision to allocate the land proportionately between landowners and tenants and thereby put an end to dual ownership.

<sup>41</sup> Article 51(e) Policies relating to agriculture and land reforms: (1) to make scientific land reforms having regard to the interests of the farmers, while ending the dual ownership existing in the lands, (2) to enhance product and productivity by carrying out land pooling, while discouraging absentee land ownership, (3) to make land management and commercialization, industrialization, diversification and modernization of agriculture, by pursuing land-use policies to enhance agriculture product and productivity, while protecting and promoting the rights and interests of the farmers, (4) to make proper use of lands, while regulating and managing lands on the basis of, inter alia, productivity, nature of lands and ecological balance, (5) to provide for the farmers’ access to agricultural inputs, agro-products at fair price and market.



## 3. OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS TREATIES

Nepal is a party to most of the core international human rights treaties including the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Nepal is also a party to a number of International Labour Organization (ILO) conventions including the Convention No. 169 that, among other things, protects rights of Indigenous peoples to land. After assessing Nepal's efforts towards respecting, protecting and fulfilling the obligations under the stated treaties, the respective treaty bodies have made several recommendations with implications for access to land for groups that are discriminated against. Some of these key recommendations are set out below:

### 3.1. REHABILITATION OF BONDED LABOURERS

The Committee on Economic Social and Cultural Rights (CESCR) has recognized the lack of access to fertile land for cultivation as one of the obstacles for social reintegration of former bonded labourers (*Kamaiya, Haliya and Kamalari*) and calls on the Government of Nepal to ensure full rehabilitation and integration including through providing access to cultivable land.<sup>42</sup> On the issue of ineffectiveness of efforts to resettle and rehabilitate former bonded labourers, the Committee on the Elimination of Racial Discrimination (CERD) also recommended that the Government of Nepal strengthens its efforts to fund voluntary and sustainable resettlement and rehabilitation of former bonded labourers, including through the provision of affordable and adequate housing and alternative livelihoods.<sup>43</sup>

### 3.2. ADDRESSING POVERTY AND LANDLESSNESS

Concerned by the poverty among the disadvantaged groups exacerbated by the lack of access to, and ownership of, land, CESCR recommended Nepal to facilitate access to, and ownership of, land including for Dalits and Indigenous groups.<sup>44</sup> Underscoring the importance of access to land for addressing poverty, hunger and malnutrition, it also recommended that the Government of Nepal adopts "measures in the fields of health and education, land reform and distribution, especially for the landless, tenants, smallholders and disadvantaged and marginalized individuals and groups".<sup>45</sup> Given that landlessness is disproportionately prevalent among Dalits and Adivasi/Janajati (the terms used in Nepal for Indigenous peoples), CERD recommended that the Government of Nepal takes all necessary measures, including through the implementation of relevant laws, to eliminate patterns of land distribution that represent de facto discrimination against Dalits and other marginalized castes or ethnic groups.<sup>46</sup>

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<sup>42</sup> CESCR, Concluding Observations on the third periodic report of Nepal, adopted at its 70th Meeting held on 28 November 2014, paras 9 & 18.

<sup>43</sup> CERD, Concluding Observations (1 May 2018) on seventeenth to twenty-third periodic report of Nepal on its implementation of the provisions of the ICERD, para. 28.

<sup>44</sup> CESCR, Concluding Observations on the third periodic report of Nepal, adopted at its 70th Meeting held on 28 November 2014, para. 23.

<sup>45</sup> CESCR, Concluding Observations on the third periodic report of Nepal, adopted at its 70th Meeting held on 28 November 2014, para. 25.

<sup>46</sup> CERD Concluding Observations (1 May 2018), para. 30.

### 3.3. INDIGENOUS PEOPLES' RIGHT TO LAND

In its Concluding Observations on the third periodic report of Nepal, CESCR raised a number of concerns over land issues of Indigenous peoples in Nepal. CESCR was concerned that “indigenous peoples have been deprived of their traditionally owned lands, territories and resources due to development projects carried out by the State party without seeking their free, prior and informed consent”. Another matter of concern for CESCR was “the persistence of the lack of legal provision to recognize community ownership of lands by indigenous peoples”. CESCR thus recommended Nepal to ensure the right of Indigenous peoples “to own, use and develop their ancestral lands, territories and resources” and “seek their free, prior and informed consent before launching any development project”.<sup>47</sup> Assessing the seventeenth to twenty-third periodic report of Nepal on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the CERD has also recommended that the Government of Nepal finds an adequate negotiated solution to resolve the dispute regarding the rights of Indigenous peoples over their traditional lands and natural resources and obtain their free, prior and informed consent before the approval of any project affecting the use and development of their traditional lands and resources.

After his visit to Nepal, the Special Rapporteur on rights of indigenous peoples James Anaya had also issued a report in 2009 calling upon the Government of Nepal to set up a mechanism to provide redress to Indigenous peoples for their loss of land or access to natural resources which was incurred without their free, prior and informed consent.<sup>48</sup>

### 3.4. WOMEN'S ACCESS TO LAND

In the context of women's access to land and natural resources, the CEDAW Committee recommended the Government of Nepal adopts “temporary special measures to enhance access for women facing intersecting and multiple forms of discrimination, including indigenous, Dalit women, rural women, women with disabilities and widows in the Hindu community, as well as women affected by conflict and natural disasters, to health services, education, safe water and sanitation services, food, fertile land, natural resources, housing, credit and income-generating opportunities”.<sup>49</sup>



Women working in the paddy field. Rautahat, Nepal © CSRC

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<sup>47</sup> CESCR, Concluding Observations on the third periodic report of Nepal, adopted at its 70th Meeting held on 28 November 2014, para. 9.

<sup>46</sup> UN General Assembly, Human Rights Council, 12th Session, 2009, Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya, UN Doc. A/HRC/12/34/Add.3.

<sup>49</sup> CEDAW Committee, Concluding Observations on the sixth periodic report of Nepal, 14 November 2018, para. 41(c).

## 4. SCOPE OF THE AMENDMENT

The Seventh Amendment of the Lands Act has been enacted and the Eighth Amendment Bill passed by the Parliament is currently awaiting final authentication by the President of Nepal. Despite the reiterated calls from stakeholders, the Government of Nepal has failed to take a holistic approach to addressing the land-related problems. Neither the Seventh Amendment nor the eighth amendment includes in their scope the constitutional promises for land reform and access to cultivable land for peasants, other groups such as Indigenous peoples and women within these groups. A holistic approach is also essential to operationalize the policy goals (for example, equitable access to land) set forth under the recently adopted National Land Policy (2019).<sup>50</sup> Following are the key commitments:

- Defining and managing forms of land tenure system.
- Defining, protecting and managing different forms of rights over land.
- Protecting communal land tenure traditionally practised by communities.
- Making ceilings on landholding scientific and time-worthy.
- Acquiring land in excess of the legal limits.
- Making housing arrangement for landless families living in poverty.
- Enhancing access to cultivable land by peasant families.
- Enhancing access to and ownership of land for women.
- Establishing a system of scientific valuation of land.
- Securing institutional reform and capacity development of the agencies involved in the land administration.
- Raising public awareness concerning land.

As obligated by the Constitution to “make legal provisions for the implementation of the rights conferred by this Part within three years of the commencement of this Constitution”,<sup>51</sup> laws necessary to implement all land-related constitutional obligations should have been enacted within three years. Such an express threshold for enactment of laws was deemed an essential measure to prevent the delays in operationalization of rights that were experienced in implementing the Interim Constitution of Nepal.<sup>52</sup> The Government should also have given adequate attention to the recommendations of the UN treaty bodies as mentioned above in view of the constitutional obligation to implement the international treaties to which Nepal is a party.<sup>53</sup>

As the constitutional promises can only be operationalized by parliamentary enactment, legal arrangements – including through amendment of the Lands Act or the adoption of an integrated Lands Reform Act – are indispensable for opening the door to access to land by landless peasants including the Indigenous Tharus, the second largest ethnic community in Nepal, who have been hit by the decade-long conflict<sup>54</sup> and have suffered human rights violations due to centuries-old exploitative labour practices.<sup>55</sup> Unless some of the gaps in the legislative framework governing land are addressed, the guarantees under the constitution and

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<sup>50</sup> Adopted by the Council of Ministers in March 2019.

<sup>51</sup> Article 47 reads, “The State shall, as required, make legal provisions for the implementation of the rights conferred by this Part, within three years of the commencement of this Constitution.”

<sup>52</sup> For example, the right to food sovereignty guaranteed under the Interim Constitution, 2007 could not be operational due to absence of the implementing law.

<sup>53</sup> Article 51(b)(3) of the Constitution obligates the government to implement the international treaties ratified by Nepal.

<sup>54</sup> See, UN OHCHR, *Conflict-related disappearances in Bardiya District*, December 2008, available at: [http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2008\\_12\\_19\\_Bardiya\\_Report\\_Final\\_E.pdf](http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2008_12_19_Bardiya_Report_Final_E.pdf)

<sup>55</sup> Backward Society Education (BASE), “Kamaiya Freedom Movement”, available at: <http://nepalbase.org/freedom-movement/>

international treaties to which Nepal is a party cannot be effectively realized.

Amnesty International Nepal, CSRC and JuRI-Nepal therefore call on the Government of Nepal to ensure that any legal amendments to existing land laws or a new legislation on land include:

- Definition of landlessness,<sup>56</sup> which is sufficiently wide to include situations where people do not own or have no access to adequate or productive land, or live or work on land to which they have no ownership or tenure rights.
- Recognition of all elements of access to land which includes use of land, control over land and transfer of ownership of land.
- A mechanism for assessing, on a regular basis, the situation of access to land by special categories of peoples (for example, Dalits, Indigenous peoples) who are marginalized and discriminated against.<sup>57</sup>
- A provision to enhance access to land by Indigenous groups including Tharus who lost their control over ancestral land by application of laws, policies and practices prejudicial to them.
- A provision requiring authorities to seek free, prior and informed consent of Indigenous peoples before the approval of any project affecting the use and development of their traditional lands and resources.
- A provision requiring the authorities to give a priority to landless peasants, female peasants, and smallholders from communities marginalized and discriminated against in terms of providing government land on a leasehold basis and awarding subsidies in agricultural and livestock sectors.
- Legal recognition of different forms of land tenure including community holdings practiced by Indigenous peoples in Nepal.
- Legal recognition of Indigenous peoples' right to own, use and develop their ancestral lands, territories and resources as obligated by the ILO 169.
- Definition of land tenancy rights regardless of the nature of ownership (for example, state, private or trust).<sup>58</sup>
- A duty to ensure sustainable resettlement of freed bonded labourers (*Kamaiyas*, *Haliyas*, *Kamalaris*) and enhance their access to land, including by setting targets and deadlines.
- A duty to look into historical marginalization of Indigenous groups (for example, Tharus) including through dissociating them from access to land and natural resources, recognize the mistakes made and take affirmative action/special measures to heal painful emotions and wounds created by exploitative, exclusionary and discriminatory systems and practices in the past.<sup>59</sup>
- A duty to address the problems of unregistered tenants by creating a mechanism to identify and inquire into their situation and recognize their tenancy rights.
- A duty to fix ceilings on landholdings, taking into account scientific factors such as value of land, fertility of land, urban and rural dynamics, and agricultural and non-agricultural purposes of landholdings.
- A provision recognizing community holdings of pasture land.
- A mechanism explicitly mandated for monitoring and supervising the utilization of the land exempted from the ceiling.

<sup>56</sup> Landlessness indicates the situation where a person does not own any land or the condition in which a person is living or working on land to which they have no legal rights.

<sup>57</sup> For example, women, Dalits, Indigenous peoples, ex-*Kamaiyas*, *Kamalaris* and *Haliyas*.

<sup>58</sup> As defined by the Guthi (Trust) Corporation Act, 2033 (1976), "*Guthi* includes a Guthi (trust) endowed by any philanthropist through relinquishment of his or her title to a movable or immovable property or any other income-yielding property or fund for the operation of any shrine (*matha*) or festival, worship or feast of any God, Goddess or for the construction, operation or maintenance of any temple, shrine (*devasthal*), rest house (*dharmashala*), shelter (*pati*), inn (*pauwa*), well, tank, road, bridge, pasture, garden, forest, library, school, reading hall, dispensary, treatment facility, house, building or institution for any religious or philanthropic purpose."

<sup>59</sup> For example, soft loan, agricultural subsidy, distribution of land for cultivation/housing, priority on leasehold and contract farming.

- A provision to address grievances of those land-dependent local peasants who have been living on and cultivating fallow lands for generations by requiring the authorities for measurement of their land and offering them with ownership of such land.
- A provision requiring the respective local governments to regulate existing sharecropping practices, protect dignity of sharecroppers and end exploitative practices.

***Recommendation:***

- *Amend the Lands Act or enact separate comprehensive land reform legislation that brings in its scope and thereby addresses the above-mentioned issues in view of Nepal's obligations under the Constitution of Nepal and international human rights treaties to which Nepal is a party.*

# 5. SPECIFIC COMMENTS ON THE SEVENTH AMENDMENT

## 5.1. PROVIDING LAND TO LANDLESS DALITS

The Seventh Amendment to the Lands Act has amended Section 52 to create a legal framework for implementing the constitutional obligation to provide land to landless Dalits. By this amendment, there is a requirement in the Lands Act to identify landless Dalits and provide a plot of land to them.

The amended provision also provides for a three-year time limit to complete the process of providing land to landless Dalits. In terms of process/steps to be followed in executing the obligation to provide land, the amended provision only delegates power to the Government of Nepal to make necessary arrangements. The Seventh Amendment does not contain any provision in terms of the role and responsibility of provincial and local governments in carrying out this obligation.<sup>60</sup>

Further, no provision is made to define landlessness<sup>61</sup> and prescribe criteria to identify landless Dalits for distribution of land under the Lands Act. The Amendment does not contain any statutory guidance in terms of a number of core aspects such as purpose (for example, housing and sustainable livelihood through farming), quantum, nature and quality of land to be provided to landless Dalits under this Act. All these important substantive aspects of legislation have been left for the executive wing to determine.

Commenting on a copy of the Seventeenth Amendment in the Land Regulation 1964<sup>62</sup> unofficially obtained from the Ministry of Land, Cooperatives and Poverty Alleviation, the stakeholders have expressed serious concerns over the process as well as content of the Regulation. The Amendment to the Regulation is not yet in the public domain. Dalit rights activists and lawyers consulted in the process of preparing this briefing criticized the government for a lack of consultation in terms of formulating the amendments to the Act as well as the regulation.<sup>63</sup> They also viewed that the Regulation goes against the spirit of the constitutional provision and the Dalit rights movement as the amended Regulation limits the purpose of providing land to "housing" only. According to them, the purpose of Article 40(5) of the Constitution is to enable landless Dalits to live a life with dignity, including through providing them with land as a sustainable source of livelihood. By denial of land provision for agricultural purpose, the government attempted to show a mechanical compliance with the constitutional provision and bypassed actual constitutional promise, they added.<sup>64</sup>

### ***Recommendations:***

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<sup>60</sup> As expressed by the participants of the Interactive Workshop dated 1 November 2018 in Kathmandu organized by JuRI-Nepal, CSRC, National Network on ESCR and Right to Food Network.

<sup>60</sup> ICESCR, Article 11(2).

<sup>61</sup> Landless people own no land, and the condition of landlessness is typically characterized by people living or working on land to which the individual has no legal rights.

<sup>62</sup> As informed by the Ministry of Land Management, Cooperatives and Poverty Alleviation, dated 15 September 2019, the Council of Ministers has recently adopted the Seventeenth Amendment to the Land Regulation 1964 to put the Seventh Amendment into operationalization.

<sup>63</sup> Conversation with Advocate Tek Tamata (UN Development Programme), Advocate Shyam Bishwokarma (Nepal Bar Association), Advocate Bhakta Bishwokarma (Dalit NGOs Federation) and Bhim Pariyar (ESCR-Network Nepal), dated 15 September 2019.

<sup>64</sup> Conversation with Advocate Tek Tamata (UN Development Programme), Advocate Shyam Bishwokarma (Nepal Bar Association) and Advocate Bhakta Bishwokarma (Dalit NGOs Federation) dated 15 September 2019.

- *Make adequate legal arrangements and take forward the implementation of the provisions to identify landless Dalits and provide them with land for housing as well as sustainable livelihood as promised under the Constitution.*
- *Define landlessness and provide an explicit criterion to identify the landless Dalits eligible to receive land from the government.*
- *Ensure legal clarity in terms of purpose, type and quantum of land to be provided for landless Dalits within an agreed time frame.*
- *Clarify role and responsibilities of the provincial and local governments in terms of addressing the landlessness among Dalit communities including through enhancing their access to land as a sustainable source of food security and livelihood.*
- *Provide adequate provisions to ensure non-discrimination, transparency and accountability in terms of distributing the land.*
- *Though there is a legal obligation to complete the distribution of land within three years, there should be a clear-cut obligation of the responsible mechanism to provide a report to the government on progress made on annual basis.*

## **5.2. BAN ON “TRANSFER RIGHTS”:**

To be able to utilize the land as an asset and for enhancing a standard of living, availability of all forms of access to land is indispensable. The amended provision under Section 52A(2) of the Act provides that “the right to ownership of land provided under Sub-section (1) cannot be transferred to others by any other process for ten years except for the purpose of ownership transfer or partition of parental property among coparceners” who have co-ownership of the right to inheritance of the property. Such a ban on transfer of ownership outside of coparceners may not be appropriate in view of the right to freedom and property guaranteed under the Constitution.<sup>65</sup> It is important to make sure that any such provision regulating the right to property should not contravene the purpose of Article 18(3) of the Constitution (for example, the protection, empowerment and development of vulnerable groups including Dalits). If consideration was given to prevent misuse of the distributed land and promote a sustainable basis for livelihood and housing, there might be different ways to ensure that. Transfer of ownership or mortgage or leasing out the land provided under this Act may be made subject to special procedures for the specified period of time to ensure that the purpose of the transaction was legitimate or in the interest of the recipient of the distributed land.

### ***Recommendation:***

- *Consideration should be given to amending clause 52A(2) of the Lands Act to allow transfer of ownership or mortgage or leasing out the land provided under this Act so long as such transaction becomes legitimate or in the interest of the recipient of the distributed land.*

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<sup>65</sup> Article 17 (right to freedom) & Article 25 (right to property).

### 5.3. MECHANISM AND PROCEDURES FOR PROVIDING LAND

For the purpose of providing land to landless Dalits, the amended Section 52A(3) empowers the Government of Nepal to constitute a commission, committee or task force by issuing a notice in the Nepal Gazette. As provided under Section 52A(4), other provisions governing the formation of “Commission”, “Committee” or “Task Force” are to be prescribed in the regulation. Mode of formation, mandate, power and functions of such mechanism thus remain indefinite as the Act entrusts the government with a discretionary power to prescribe these in the regulation. Such a lack of statutory guidance in terms of the substantive aspects of the mechanism responsible to provide land poses a risk of politicization of the mechanism.<sup>66</sup> There is also absence of any mechanism responsible to address grievances in terms of distribution of land to landless Dalit under this Act.



Farmers planting paddy. Lothar, Chitwan Nepal © CSRC

#### **Recommendations:**

- *Make a provision that gives a clear guidance on formation, mandate and powers of the mechanism responsible to identify landless Dalit, acquire land and provide land to the landless Dalit.*
- *Specify a mechanism responsible to address grievances in terms of distribution of land.*

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<sup>66</sup> This was the concern of the participants of the Expert Review Workshop dated 12-12 October 2018 organized in Kathmandu by JuRI-Nepal, CSRC, Right to Food Network and ESCR-Network Nepal.



# 6. SPECIFIC COMMENTS ON THE EIGHTH AMENDMENT BILL

## 6.1. DEFINITIONS

A clearer definition of landlessness as well as a set of criteria for prioritization of beneficiaries to receive land remains indispensable. However, the Eighth Amendment Bill passed by the Parliament falls short in terms of bridging such a gap. Instead of providing a set of criteria/conditions on the basis of which priority households are identified and are accorded with the access to land, the Bill proposes definitions of a few terms including “landless squatters”<sup>67</sup> and “unplanned dwellers”.<sup>68</sup> The definitions are at present ambiguous. As defined by the Bill, “landless squatters” is meant for “an individual or family members dependent on him/her who or his/her family has no land under their ownership within the state of Nepal and are unable to acquire land through his/her own or their family’s income, sources or efforts.” The definition is problematic because this does not require that their livelihood need to be dependent on land. Similarly, this is narrowly focused to “ownership” and does not consider other types of secured land tenures. Even if people do not have ownership of their own, they might have enjoyed secured use right to land. The definition generalizes the condition of landlessness to include everyone who does not own land.

Similarly, the term “unmanaged dwellers” has been defined to mean for “the individuals and family members dependent on him/her who have a registered private land in his/her or their family ownership within the State of Nepal and is living by constructing a house, huts in the government's land, unregistered, unused or forest land”. The definition of “unmanaged dwellers” is also problematic in terms of its focus on ownership and its generality. The type of dwellers that need to be a matter of priority for the state should have been taken into consideration in terms of crafting the language of the definition. Consideration should have been given to the fact that whether such dwelling was for the need (for example, education, health, livelihood and employment opportunities) or a greed (for example, to amass immovable property). As reported in the media, many people belonging to the same family have captured land in different places of the country identifying themselves as squatters by taking the benefit of the government's failure to maintain integrated database on the landholdings.<sup>69</sup>

These definitions do not respond to the context of the land rights movement and the struggles of peasants in Nepal, which are concerned with access to land for those families who are dependent on land for their livelihoods.

### ***Recommendations:***

- *Define key terms such as “landlessness” in such a way that those who are land dependent and do not have legally protected ownership or rights to use land are considered landless and set a criterion for prioritization of beneficiaries to receive land from the state taking dynamics of intersectionality (for example, gender, ethnicity, poverty) into consideration.*
- *Tighten the definition of “unmanaged dwellers” for providing ownership of land referring to socioeconomic conditions to avoid greed-based claim of land ownership for unjust enrichment.*

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<sup>67</sup> Eighth Amendment Bill, proposed Section 52(B), Explanation Kha(A).

<sup>68</sup> Eighth Amendment Bill, proposed Section 52(B), Explanation (B).

<sup>69</sup> Himal Khabar Patrika, 20 August 2019, <http://himalkhabar.com/news/14140>

## 6.2. PROVIDING OWNERSHIP OF LAND

Section 52B proposed in the Eighth Amendment Bill empowers the Government of Nepal to legalize the cultivation of government land or forest land by the “landless squatters” and “unmanaged dwellers” by granting the ownership of such land.<sup>70</sup> Such a legalization is subject to a proof of settlement in such land for more than 10 years and such ownership of land is granted on a one-off basis. To grant ownership of land, the Government of Nepal is empowered to prescribe standards and apply them. Instead of the land occupied by the dwellers, the government is also empowered to provide any piece of land not exceeding the ceiling prescribed by the government out of other appropriate government land.<sup>71</sup> In case the dwellers are found to have settled in the land categorized (land important in terms of religion, national security, prevention of natural disasters etc.) under Sub-section 9,<sup>72</sup> the government may provide land for their settlement on appropriate government land without exceeding the limits to be prescribed by the government. In providing the land, the Government of Nepal shall coordinate with the respective provincial and local governments. However, there is no guidance in terms of mode of coordination.

A provision for formalizing the informal settlements, including through providing land with full ownership, is welcome. However, this does not create any entitlement to claim ownership of occupied land; rather, it is completely left at the discretion of the government. The application of the 10 years' occupation thresholds might result in leaving behind a substantive portion of the landless population. The classification, as such based on the years of occupation, does not appear fair, just and reasonable. The Bill at present does not give any guidance in terms of creating standards to guide the government on what type and how much land to be provided and on what basis the criteria or ceiling would be determined. The solution that the Bill proposed is confined to “ownership”. While it is important to emphasize full ownership over land, there should also have been adequate consideration to open up other forms of entitlements/land tenure so that a bigger portion of the landless households could benefit.

Section 52B(4) provides that if the landless and unmanaged dwellers are found to have occupied the land exceeding the limit set by the government, such land is taken by the government and given to other landless and unmanaged dwellers or used by the government in other ways. Priority should have been given to distributing such land to landless households. Section 52B(5) entrusts the governments with a discretionary power to impose a condition that those unmanaged settlers who get the land must pay 25% of the land value as per the rate prescribed by the government for the purpose of land registration.

### **Recommendations:**

- *Amend the Bill to obligate the government of Nepal to provide access to land (for example, ownership or secured use rights) for those landless people who do not fall under the category of landless dwellers residing on government land for more than 10 years.*
- *Amend the Bill to provide a guidance for the government on determining what type of land and how much land to be provided and on what basis the criteria or ceiling would be*

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<sup>70</sup> 52B. To provide land to the landless settlers or unorganized settlers: (1) Notwithstanding whatsoever is written in the prevalent law, the landless settlers or unorganized settlers living on government land or on land with human settlement at present but noted as forest area in records for at least ten years may be provided for one time by the Government of Nepal land not exceeding the ceiling of prescribed area for habitation in the location where they have been residing or an area not exceeding the ceiling of prescribed area in any government land.

<sup>71</sup> 52B(2): While providing land as per Sub-section (1), if the landless settlers or unorganized settlers are residing in a location mention in Sub-section (9), then the Government of Nepal shall provide them land equal to an area not exceeding the prescribed area in any other government land deemed appropriate by the government.

<sup>72</sup> The exempt categories of land include: a) Land within an area of religious, cultural and military importance, (b) Land required to be secured from the perspective of natural disaster, disaster management and environmental protection, (c) Land within public and road bounding, (d) Land essential for the use of Government of Nepal or State government. (e) Land of other prescribed locations.

- *determined.*
- *Amend the Bill not only to recognize ownership of land but also other forms of land tenure including use rights.*

### 6.3. LAND TO EX-KAMAIYA AND HALIYA

The amendment Bill also refers to the “freed *Kamaiya*”<sup>73</sup> and “*Haliya*”<sup>74</sup> and states that the government shall provide land to those who have not yet received proportionate to the quantum of land that was provided as per the prevailing law.<sup>75</sup> While it is important to provide a legal guidance for providing land to ex-*Kamaiya* and *Haliya*, this provision fails to address a number of problems that they are facing in terms of access to land. As provided under directive principles incorporated in the Constitution, the state is responsible “to identify the freed *Kamaiyas*, *Kamalaris*, *Haruwa*, *Charuwa*, tillers, landless, squatters”.<sup>76</sup> Once identified, they should be rehabilitated by providing “housing, housing plot for residence and cultivable land or employment for their livelihoods”.<sup>77</sup> The CESCR has also called on the Government of Nepal to ensure full rehabilitation and integration of former bonded labourers (*Kamaiya*, *Haliya* and *Kamalaris*) including through providing access to cultivable land.

Concerns have also been raised by stakeholders that many former *Kamaiya* families who went through rehabilitation continued to reside on riverbanks and barren plots of land under poor living conditions, with limited employment opportunities and little access to education. Many of them have still been left behind because of the lack of identification and registration. The Eighth Amendment Bill should have provided a comprehensive guidance on addressing the problems around rehabilitation and resettlement.

#### **Recommendations:**

- *Obligate the Government of Nepal to assess the situation of access to cultivable land for freed Kamaiyas and Haliyas, identify the households who are deprived of access to land and provide access to cultivable land for their livelihood.*
- *Bring Kamalaris, Haruwa and Charuwa into the scope of land distribution schemes as directed under the Directive Principles.*

### 6.4. MECHANISM RESPONSIBLE TO DISTRIBUTE LAND

Like the Seventh Amendment, a mechanism has been proposed by the eighth amendment to carry out the process of distributing land. Section 52B(11) of the Bill provides for creating a commission responsible to identify the “landless squatters” and “unmanaged dwellers” and prepare a list, conduct a field study and submit recommendations to the government for distributing the land. Such a commission is created by the government by issuing a notice in the

<sup>73</sup> Those who provide *Kamaiya* labour are called *Kamaiyas*. A decision by the Council of Ministers dated 17 July 2000 to liberate all *Kamaiya* labourers was followed by adoption of The *Kamaiya* Act 2002. As defined by Section 2(a) of the Act, “*Kamaiya* labour” refers to the labour or service provided by a person to a creditor without any wages or at low wages for the following reasons: 1) to repay loans incurred by him or any member of his family, or to pay interest thereon; 2) to repay loans incurred by his ancestors, or to pay interest thereon; or 3) to repay the loans of a *Kamaiya* labourer for whom he provided surety to the creditor.

<sup>74</sup> *Haliya* are those who served as agricultural bonded labourers for landlords to till the land and undertake heavy manual labour. This system was practised in the Far and Mid-Western Regions of Nepal in particular. <http://un.info.np/Net/NeoDocs/View/2393>

<sup>75</sup> Section 52B(6) reads, “While providing land as per this Section, the land should be provided in proportion to the land provided by the Government of Nepal as per the prevalent law to the freed *Kamaiya* and *Haliya* (bonded labourers).”

<sup>76</sup> Article 51 j(6) reads: “to identify the freed bonded labours, *Kamlari*, *Harawa*, *Charawa*, tillers, landless, squatters and rehabilitate them by providing housing, housing plot for residence and cultivable land or employment for their livelihoods.”

<sup>77</sup> Article 51 j(6).

*Nepal Gazette.*

However, nothing is provided under the Bill to detail the terms and conditions in relation to formation, power and functions of the commission. These matters are completely left at the discretion of respective governments to provide for that in the regulation, posing the risk of politicization of the commission and its functioning. The Act should have provided details about the powers and functions of the commission and a clear legal basis for its independent/impartial and effective functioning.

**Recommendations:**

- *Insert adequate provisions on formation of a commission that, among others, include a clear guidance on its functions, powers and responsibilities.*
- *Consideration should be given to ensure gender and social inclusion in terms of appointment of the officials and staff of the commission.*

## **6.5. TENANCY RIGHTS**

The amended (A2) of Section 15 is problematic in the context of tenancy rights. This empowers the government to delist any tenant from the list of tenants if any fact comes to light from any source that the tenant has no longer cultivated the land without specifying a period of time. This does not require taking into account whether the tenant had voluntarily left to cultivate the land. As there is no requirement to follow a due process of inquiring into why the respective tenant was not cultivating the land, such a provision can be easily misused to bypass the tenancy right.<sup>78</sup>

**Recommendation:**

- *Remove the provision that allows authorities to delist the tenant from the official record of tenants simply referring to the fact that the tenant no longer cultivates the land without due process.*

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<sup>78</sup> Expert Review Workshop on Fundamental Rights Implementation Laws dated 12-13 October 2018 jointly organized by JuRI-Nepal, CSRC, National Network on Economic, Social and Cultural Rights and Right to Food Network-Nepal.

## 7. CONSULTATION WITH STAKEHOLDERS

In addition to the substantive provisions, concerns have also been raised in relation to the process of formulating the Bill and enacting it. The stakeholders consulted in the process of drafting this briefing had been critical of the government's failure to consult with the relevant stakeholders prior to introducing the Bill in the Parliament and prior to adoption of the regulation.<sup>79</sup> The Seventh Amendment Bill was submitted to the Parliament and adopted without effective parliamentary scrutiny and deliberations.<sup>80</sup> Similarly, the Regulation has also been drafted and endorsed without consulting the stakeholders. Amnesty International Nepal, CSRC and JuRI-Nepal would like to stress that the broad-based participation and representation of citizens in formulating and enacting laws and public policy is not only critical for strengthening democracy but also is a human right norm incorporated in the ICCPR to which Nepal is a party.<sup>81</sup> Consultation, participation and consent is a part of the obligation with regard to Indigenous peoples under the ILO Convention 169.<sup>82</sup>

### **Recommendations:**

- *The authorities should adequately consult with the stakeholders before introducing any bill in the Parliament or enacting necessary regulation to implement the amended provision.*
- *With regard to law and policy making with implications for Indigenous peoples, consultations must be carried out with their representative institutions in order to obtain their consent.*

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<sup>79</sup> Meeting of a group of civil society organizations involved in the right to land dated 7 May 2019, Kathmandu.

<sup>80</sup> This is one of the issues raised by a group of civil society organizations in their memorandum on recently enacted laws (Right to Food and Food Sovereignty Act, Right to Housing Act and Lands (Seventh Amendment) Act) submitted to the Minister for Law, Justice and Parliamentary Affairs, dated 11 December 2018.

<sup>81</sup> Constitution of Nepal (2015), Article 25.

<sup>82</sup> Article 6 of ILO Convention 169 includes a broad requirement to consult with Indigenous peoples whenever legislative or administrative measures affect them directly.

## 8. CONCLUSION

By taking legislative initiative (Seventh and Eighth amendment to the Lands Act), the Government of Nepal has taken a positive step towards addressing the problem of landlessness and access to land by communities that are marginalized and discriminated against. This development marks a progression in terms of creating a legal basis to provide ownership of land for landless Dalits, and other landless and unmanaged dwellers.

However, the provisions added in the Lands Act through the Seventh Amendment are inadequate in terms of defining the landlessness, determining the entitlements and setting the criteria for providing land to landless Dalits. The Government of Nepal should address gaps in the Act either by introducing an amendment in the Act or bridging the gaps, as appropriate, in the law through formulating a detailed regulation in consultation with the stakeholders.

The government has taken a piecemeal approach which is not adequate to address issues related to exploitative land relations and lack of access to land for those who are dependent on land for their livelihood. The Eighth Amendment Bill attempts to address some of the problems by providing ownership of land for landless dwellers and unmanaged dwellers. But provisions to address a wide range of issues (as listed below) linked to landholdings and land relations are absent. This clearly demonstrates the government's reluctance to respond to issues pertaining to land reform in a holistic way.

Amnesty International Nepal, CSRC and JuRI-Nepal therefore call on the government for formulation and enactment of a comprehensive legal framework on land in consultation with broad-based stakeholders (for example, civil societies, peasants' associations, National Human Rights Institutions) to address the long-standing agenda of land reform including for enhancing access to land by those households and communities (for example, Dalits and indigenous communities such as Tharu) dependent on land. As a legislative basis for addressing overall aspects of the land reform, such legal framework must:

- Define landlessness, which is sufficiently wide to include situations where people do not own or have no access to adequate or productive land, or live or work on land to which they have no ownership or tenure rights.
- Recognize all elements of access to land which include use of land, control over land and transfer of ownership of land.
- Provide a mechanism for assessing, on regular basis, the situation of access to land by special categories of peoples (for example, Dalits, Indigenous peoples) who are marginalized and discriminated against.
- Provide for enhancing access to land by Indigenous groups including Tharus who lost their control over ancestral land by application of laws, policies and practices prejudicial to them.
- Require authorities to seek free, prior and informed consent of Indigenous peoples before the approval of any project affecting the use and development of their traditional lands and resources.
- Require the authorities to give a priority to landless peasants, female peasants, and smallholders from communities marginalized and discriminated against in terms of providing government land on a leasehold basis and awarding subsidies in agricultural and livestock sectors.
- Recognize different forms of land tenure including community holdings practised by Indigenous peoples in Nepal.
- Recognize Indigenous peoples' right to own, use and develop their ancestral lands, territories and resources as obligated by the ILO 169.
- Define land tenancy rights regardless of the nature of ownership (for example, state, private or trust).

- Ensure sustainable resettlement of freed bonded labourers (*Kamaiyas, Haliyas, Kamalaris*) and enhance their access to land, including by setting targets and deadlines.
- Obligate to look into historical marginalization of Indigenous groups (for example, Tharus) including through dissociating them from access to land and natural resources, recognize the mistakes made and take affirmative action/special measures to heal painful emotions and wounds created by exploitative, exclusionary and discriminatory systems and practices in the past.
- Address the problems of unregistered tenants by creating a mechanism to identify and inquire into their situation and recognize their tenancy rights.
- Fix ceilings on the landholdings based on scientific grounds such as value of land, fertility of land, urban and rural dynamics, agricultural and non-agricultural purposes of landholdings.
- Recognize community holdings of pasture land.
- Create a mechanism explicitly mandated for monitoring and supervising the utilization of the land exempted from the ceiling.
- Address grievances of those land-dependent local peasants who have been living on and cultivating fallow land for generations, but such a land was left non-measured due to various reasons, including through conducting the measurement of their land and offering them with ownership of such land.
- Require the respective local government to regulate the existing sharecropping practices, protect dignity of sharecroppers and end exploitative practices.

**AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS.**

**WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.**

**CSRC FOCUSES ON ADDRESSING THE ISSUE OF LAND REFORM. IT BECAME PART OF A NATIONAL MOVEMENT WITH THE AIM OF SECURING LAND RIGHTS THROUGH PRO-POOR LAND AND AGRARIAN REFORM.**

**JuRI-Nepal IS A NON-GOVERNMENTAL, APOLITICAL AND NON-PROFIT ORGANIZATION WORKING IN THE FIELD OF PROTECTION AND PROMOTION OF HUMAN RIGHTS AND STRENGTHENING SOCIAL JUSTICE AND RULE OF LAW IN NEPAL.**



# NEPAL: LAND FOR LANDLESS PEASANTS

## COMMENTS AND RECOMMENDATIONS ON AMENDMENT TO THE LANDS ACT 1964

The briefing *Nepal: Land for Landless Peasants: Comments and Recommendations on Amendment to the Lands Act* recognizes the Government's initiative for seventh and eighth amendment to the Lands Act as an important step towards addressing the landlessness among the communities marginalized and discriminated against.

However, Amnesty International Nepal, CSRC and JuRI-Nepal are concerned by the government's failure to enact or amend laws to address constitutional promises including for land reform and access of peasants to cultivable land under fundamental rights and the Directive Principles.

As highlighted in the briefing, the piecemeal approach taken by the Government is inadequate to address issues related to exploitative land relations and the lack of access to land for those who are dependent on land for their livelihood. This clearly demonstrates the government's reluctance to respond to issues pertaining to land reform in a holistic way.

The briefing underlines the importance of further legal arrangements to fill in the legislative gap in terms of enhancing access to land for marginalized and disadvantaged groups and finally calls on the government for formulation and enactment of a comprehensive legal framework on land in consultation with broad-based stakeholders to address the long-standing agenda of land reform.

