

# Government and public land management in Nepal

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*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 from rural to urban areas in search of better land for farming and better livelihoods. 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 bureau responsible for their preservation and management has resulted in their continuous depletion. This article makes a recommendation for improved management of government and public land in Nepal.*

## BACKGROUND

Nepal is a small mountainous landlocked country in South Asia. Lying between India and China, it has an area of 147 181 km<sup>2</sup> and a population of 23.4 million inhabitants. It has a rich human culture and natural biodiversity with more than 60 ethnic groups and 70 spoken languages. Occupying only 0.1 percent of the earth, Nepal is home to 8 percent of all the world's population of birds (more than 848 species), 4 percent of the world's mammals, 11 of the world's 15 families of butterflies (more than 500 species), 2 percent of all flowering plants in the world, 600 indigenous plant families and 319 species of exotic orchids. However, economically, the situation is not that encouraging. Per capita income in Nepal is a mere US\$240 per year. Worst of all, the single indicator showing the condition of people in Nepal is the percentage of the population living below the poverty line – 38 percent (Nepal Tourism Board, 2002). Some 30.7 percent of the population is engaged in subsistence farming (SD-CBS, 2004). The country consists of five physiographic regions: the Terai (or the plains with a minimum altitude of 68 m), the Siwaliks, the Middle Mountains, the High Mountains and the Himalayas (with a maximum height of 8 848 m). Most of the fertile agricultural

lands lie in the Terai plains and the river valleys in the Siwaliks and the Middle Mountains. These regions also have more significant economic and development activities. With almost all the road network located in these areas, they are also home to all the 58 major urban centres (municipalities and submunicipalities) in the country. Therefore, there is heavy population pressure on these areas. A natural consequence is the growth of migration of the poor and landless from the higher and less fertile rural mountains to the more fertile plains and urban centres in search of land for tilling and jobs to provide a livelihood. This results in encroachment on government and public land and in the growth of slums. The protection of government and public land in order to safeguard the environment and natural habitat and to mitigate natural disasters (flooding, landslides, etc.) in a context of climate change is currently a prime challenge to land management in Nepal.

## GOVERNMENT AND PUBLIC LAND – REGISTRATION, PROTECTION AND CHALLENGES

In Nepal, government and public land is defined (LBMC, 1963) as follows. “Government land” means roads, paths, railways, and land housing government buildings or constructions; and this term also denotes forest, shrubs, rivers, rivulets,

land abandoned by rivers, lakes, ponds and their banks, canals, water channels, unregistered land, uncultivated land, unused landslopes, sands and other lands specifically denoted so by the Government of Nepal through publication in the *Nepal Gazette*. “Public land” means land allocated for use not only by individuals but by the general public, such as paths, ponds, springs, wells and their banks, cattle exits, grazing land, graveyards, public inns, temples, place for religious practices, memorials, courtyards, sewers, market places, public entertainment and sports grounds and other lands specifically denoted so by the Government of Nepal through publication in the *Nepal Gazette*.

Thus, government land can basically be classified into two categories: government land owned by particular government entities, such as government building complexes; and government land owned by government in general, such as forests and unregistered/uncultivated land. Public land is not owned by any individual or institution and is denoted as public land in the land registers. The maintaining of the inventory and the protection of public land is the responsibility of the local unit, e.g. the respective village development committee (VDC), municipality or the district development committee (DDC). Clauses 25(c) and 93(a) of the Local Self-Governance Act 1999 mention one of 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, madarsas, holy places, barren land, ponds, wells, lakes, deep water, canals, taps, stone water taps etc” within their areas. Clause 189(e) of the same Act mentions that one of the functions and duties of DDCs relating to land reform and management is “to protect and promote the unregistered land and government barren land situated within the district development area” (LBMC, 1999).

In Nepal, the survey officer of the district survey office is responsible for the primary

survey of all land including government, public and private land and the preparation of the cadastral maps and related land registers, which include the attributes of the land (e.g. class, area and use) and the landowner (e.g. name, citizenship details and address). The land revenue officer of the district land revenue office is the registrar of land and maintains the land records once handed over by the survey officer. The Land (Survey and Measurement) Act 2002 and Land Revenue Act 1977 categorically prohibit the registering of government and public land in the name of individuals. In the event of such land being registered in the name of individuals prior to or after the enactment of these laws, the registration shall automatically be invalid and the land will automatically be maintained as government or public land as before. There is also legal provision for maintaining the record of government and public land. The 1998 amendment of the Land Revenue Regulations 1979 has made the related district land revenue office responsible for the protection of 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 of jurisdiction and maintain 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 relevant land revenue office (DOLRM, 2001).

During cadastral surveys and re-surveys, the surveyors should pay special attention to the registration of government and public land in the name of the government. During adjudication of land boundaries, it is necessary that government and public land and their boundaries be identified first. All government and public land should be registered in the name of the “Government of Nepal” and a land ownership certificate provided to the government office concerned in the case of such land under its direct use, and to the relevant district administration office in the case of other government and public land (Acharya, 2006).

There is a clear distinction between the government authorities responsible for registering land and those responsible for its conservation, protection and custodianship. The district survey office or the district land revenue office is responsible for registering private, government or public land. Each government office is responsible for the conservation, protection and custodianship of the land under its direct use, as are any other private users for their own private land. The conservation, protection and custodianship of government land such as forests, 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. Any such registration is automatically invalid (LBMC, 1982). Government land designated as forest is under the custodianship of the Department of Forests, and government land designated as a national park or wildlife reserve is under the custodianship of the Department of National Parks and Wildlife Conservation. However, there is not a government agency responsible for the conservation, protection and custodianship of other government and public land.

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 the Local Administration Act 1971, the CDO can order the demolition of houses constructed

by unauthorized persons on government and public land and impose fines up to NRs5 000 (about US\$65). Nobody can cultivate government and public land without proper government authority. In the event of unlawful cultivation or providing unlawful authority for cultivation, the CDO can impose a jail term of three months. The CDOs should maintain the record of government and public land under their jurisdiction and provide a copy to the relevant land revenue office and office of the DDC (LBMC, 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 (Table 1), and that, in most cases, the responsibilities are overlapping. These are the real challenges as it can be easily understood that everybody's work is nobody's work. Owing to such ambiguity, the work has not been very effective. However, as the district land revenue office is the authority for maintaining records of all kinds of lands, and the land revenue office and the survey office are organizations responsible for land registration, they cannot escape from the duty of maintaining the updated records and thereby providing security of the government and public land. Out of 75 districts in Nepal, the inventories of the government and public land in 15 districts are published in book form for

TABLE 1

**Agencies directly involved in the protection/conservation of government/public land**

Agency	Mandate	Relevant legislation
Local unit (village development committee or municipality)	Maintain inventory and protect public land	Local Self-Governance Act 1999
District land revenue office	Register, maintain and protect government and public land	Land Revenue Act 1977 and Regulations 1979
District survey office	Conduct cadastral survey, adjudicate boundaries and register private, government and public land	Land (Survey and Measurement) Act 1963
District forest officer	Conserve and protect forests	Forests Act 1982
Chief district officer	Remove unauthorized possession and impose penalty Maintain record of government and public land	Local Administration Act 1971
District land revenue office	Register land	Land-related Act 1965, Land Revenue Act 1977
Department of National Parks and Wildlife Conservation	Protect and conserve protected government lands	National Parks and Wildlife Conservation Act 1972

general public use and the rest are in the process of publication (Acharya, 2006). With respect to physical security of the forests, national parks and wildlife reserves, specific government departments exist. However, for other government and public land (except under direct use of government entities), no custodian department is specifically responsible. Legally, both the district administration office and the land revenue office have responsibility for their protection.

### **ENCROACHMENT ON GOVERNMENT AND PUBLIC LANDS, AND CHALLENGES TO THEIR PROTECTION**

Despite all legal provisions for the maintenance of records of government and public lands and their protection, there is 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 rivers are being turned into slums, banks of highways and other roads are being turned into settlements and markets, and many cultivable public and government lands are being turned into farmland. There are many reasons for such illegal encroachments on government and public land. Some of the major reasons can be categorized as:

- poverty, landlessness and the search for better income;
- conflict and displacement;
- open border and immigration by 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 populations to move to urban areas in search of better income. In the Nepalese context, there is also a strong tendency of migration from less favourable to relatively more favourable areas. Therefore, the tendency is 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 in order to look for work and better wages. Much of the population is engaged in subsistence farming. Farmers tend to move to lower mountains and ultimately to the fertile plains of the Terai. With the little money they have, they cannot afford a suitably sized farm that can ensure a livelihood. Therefore, they encroach on government and public land. Similarly, the heavy flow of rural poor has increased slums and encroachment on public land, such as the banks of rivers.



***Encroachment on public land.***



The 12-year-long conflict (1994–2006) in the country has also contributed to this encroachment process with the displacement of people and immigration from remote parts of the country to the Terai and urban areas, where there was a relatively higher presence of the state. Although no official data are available for such displacement and immigration, it is natural that this has contributed to increased pressure on government and public land. Nepal has an open border with the provinces of Bengal, Bihar and Uttar Pradesh in India. Coincidentally, these provinces are the most heavily populated provinces and also home to the most poor in India. Because of the custom of open borders with India, a systematic record of people commuting across the Nepal–India border is not maintained. It is natural that there is a heavy influx of foreign poor in the Terai and urban areas of Nepal. The 2001 population and housing census shows that the foreign-born population in Nepal is 2.7 percent of the total population and that these people are mainly of Indian origin. The largest proportion of foreign-born people is in Terai area bordering India (with a maximum of 7.3 percent in Rupandehi District). The percentage of foreign-born people living in Nepal for more than ten years is 50.3 percent. Given the lack of appropriate statistics and the possibility of underestimation, the true figures for immigrants, mainly Indians, could be even higher.

Nepal has experienced political instability for many decades. There has been a distinct lack of law enforcement. The constitution has been changed at least six times in the last 60 years. The current interim constitution has undergone its fifth amendment within little more than a year of existence. Owing to such frequent political changes in the country, people do not show adequate respect for the law. Moreover, people tend to blame the government for all their problems and want to take the law into their own hands. This has resulted in increased encroachment on government and public property.

There are also some legal loopholes that enable encroachment on government and public land. In the absence of a strong legal body to stop them, non-law-abiding people tend to encroach upon government and public land. The provision of hal-aabadi (newly cultivated land and applied for land or title registration) and the correction of cadastral maps and land records in cases of discrepancy between map/record and the reality on the ground provide room for legalizing 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, the ex-kamaiya (ex-bonded labour) problem, environmental protection, etc. The different governments from the Panchayat era (political system before 1991) until today have not been able to implement a sustainable policy for dealing with the problem of landless farmers and ex-kamaiyas. As an 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 charged them with legalizing the encroachment on government and public land as a way to solve the problem. Instead of providing landless farmers with access to alternative sources of income, past governments have always considered that allocating land for subsistence farming would resolve their problems. 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 section above. The Department of Forests and the Department of National Parks and Wildlife Conservation 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 the Department of Forests, is far from adequate and they have not been

able to reach the grassroots. Community forestry programmes have been very effective, but in many national forests neither adequate boundary adjudication/demarcation nor protection has been possible. For other government and public land, no custodian organization has been entrusted with their maintenance and protection.

Nepalese society is very politically motivated. Most of the citizens, civil society and even non-governmental organizations (NGOs) focus much of their attention on the major political issues of the country. However, adequate concern for environmental issues and the protection of the government and public land is missing from their agenda. Very recently, a few NGOs have started to focus on these issues, more specifically promoting land rights and land reform issues. However, their interest in the overall management of land and the protection of government and public land is not pronounced.

## CONCLUSIONS

There are several reasons for encroachment on government and public land in Nepal and the problems concerning their protection and maintenance and the overall management of land. As the key government organization responsible for policy formulation and guidance, the Ministry of Land Reform and Management has a role to play in this respect. It is necessary that the ministry take 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 that duplication of responsibility be avoided. A clear distinction should be made between the custodian and support for the collection, updating and maintenance of government and public land records. A structural re-organization of the ministry should also be made and a new department for the custodianship of government and public land should be established. This new department of government and public

land under the Ministry of Land Reform and Management should maintain and update the records on such lands. It should also ensure that no encroachments on such lands are made and that they are physically maintained. Such an organizational set-up will fill the vacuum of the custodian organization. However, adequate legal instruments, authority, personnel and infrastructural resources should be entrusted to this department so that it can perform its duty of policing the encroachment on government and public land. It is hoped that, after these interventions and reforms, Nepal will be better placed to prevent encroachment and to maintain and protect government and public lands.

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