

## **Chapter 4**

# **Entitlement and Property Rights**

The actor-oriented approach has much in common with the approach followed by the institutionalists who explain human behaviour on the basis of an individual's resource endowment situation and his/her entitlement and access to goods and services derivable from the larger social context, including common property resources. Common property resources are resources that are shared and managed collectively by groups and communities, and there are well-defined rules of property entitlements and liability obligations to govern the use and management of the resource. In the absence of such property arrangements, the resource in question becomes an open-access resource.

The realm of entitlement is quite wide and no attempt is made to cover them all in this paper. Instead, the following discussion is limited to land ownership and tenurial arrangements.

### **4.1 Land Tenure**

Over generations, land has remained the principal resource for the sustenance of the

subsistence-bound rural communities, as well as for generating revenues for the rulers. As Stiller (1993) states: "Land was the central value in these communities. The whole of society was organized around land, not money. Land was productive. Money was not. To own or control land gave far greater status within the community than money-wealth. This explains the Nepalese hunger for land. It also explains in part the emergence of small principalities or mini-states" (p. 7). Land and what it can offer in terms of food and revenue has been of central importance all throughout history. Economic historians of Nepal explain that, before the unification of Nepal around the mid-eighteenth century, there were numerous tiny principalities whose viability and survival were determined mainly by the area and quality of land they could command against their competing neighbours. The surplus generated by severely squeezing the peasants went to pay for the military campaigns for the unification of the country during the mid-eighteenth through the mid-nineteenth centuries (Regmi 1971, 1978; Stiller 1993). Later, during much of the Rana Rule (1846-1951),

land became the principal means of enriching the ruling elites and their collaborators, while the peasantry generally languished in poverty and deprivation.

Land and land-based resources have thus been the principal source of economic surplus generated by the ruling classes. Concentration of land in the hands of a few elite classes and severe exploitation of the peasantry through the excessive expropriation of labour and land revenue have been the principal policy adopted by the rulers through much of the nation's history<sup>3</sup>.

Following the overthrow of the Rana Regime in 1951, interventions were initiated by the state to reform land tenure. Significant among them were the formation of the Land Reform Commission in 1953, promulgation of the thirteen-point programme in 1956, Preparation of Land and Cultivators' Records Act 1954, Lands Act 1955, Abolition of Birta Land Act 1957, and Agriculture (New Provisions) Act 1960.

All these measures were largely ineffective since the government was not serious about genuine reform. The overwhelming concern was to perpetuate the status quo, which was to safeguard the interests of the high-caste privileged classes.

The Lands Act of 1962 was the most comprehensive of all the past measures. It fixed ceilings on landholdings (25 *bigha*<sup>4</sup> (16.93 ha) in the *Terai* and inner *Terai*, 80 *ropani* (4.07 ha) in the hills and mountains, and 50 *ropani* (2.54 ha) in the Kathmandu Valley), protected the rights of the tenant, fixed rents at 50 per cent of the principal crop grown in a year, and abolished the *birta*<sup>5</sup> system. The act, initially implemented

in 16 districts, covered the entire country by 1964.

One of the distinguishing characteristics of the Lands Act 1962 was the compulsory savings' scheme. The scheme required all farmers to deposit a portion of their produce (1.5 maunds [55.99 kg] per owner cultivator, 1 maund [37.32 kg] per land owner renting out land and 0.5 maund [18.66 kg] per tenant in the case of the *Terai*; and 6 *mana* [1.83 kg] of paddy and 2.55 kg of maize, 4 *mana* [1.22 kg] of paddy and 1.70 kg of maize, and 2 *mana* [0.61 kg] of paddy and 0.85 kg of maize, respectively, in the hills) in kind with the local ward committee. Later, depositing cash equivalents was allowed instead of in-kind payment. The resources thus generated were to be used in granting loans to the participating members to undertake various income generating activities. The scheme was to mature in five years after which the farmers were promised full return for their deposits along with an annual five per cent interest. However, massive irregularities and misappropriations soon began to emerge in the scheme, and the then government tacitly condoned these malpractices because staunch supporters of the political system were themselves involved in the scam. Thus a scheme, which could have gone a long way in transforming the traditional rural economy of Nepal through internal resource mobilisation, was massively abused, and it collapsed prematurely.

Land constitutes the principal productive asset owned by the people of Nepal, and access to it determines the income status and well-being of the households. Besides distributional implications, an analysis of

<sup>3</sup> See Regmi (1971, 1978) for further details.

<sup>4</sup> One *bigha* = 0.66 hectares

<sup>5</sup> *Birta* is a land grant made by the state to individuals, usually on a tax free and inheritable basis (see Footnote 7 also).

land distribution helps also to throw light on the farm size productivity relationship under which smaller farms are regarded as being more intensive and productive.

In Nepal, more than two-thirds of the total holdings have less than one hectare of land, and they own only 30 per cent of the total farm area. On the other hand, 1.5 per cent of the holdings in the more than five hectares holding class possess 14 per cent of the total farm area (Table 4.1).

A regional analysis of land distribution indicates that the proportion of landless holdings is higher in the *Terai* than in the hills and mountains. Three-fifths of the holdings in the hills and mountains own less than half of the total land whereas 41

per cent of the holdings in the *Terai* own little more than half of the total land (Table 4.2).

Landless and other chronically resource poor households that are least affected directly by agricultural innovations and growth need special attention while employment opportunities expand on large farms and in non-farm sectors. Interventions to facilitate access to land are among the options available to address the equity issue. Indeed, land redistribution and regulation of tenancy contracts are favoured both on equity and efficiency grounds. Analysis of the 1991 Sample Census of Agriculture data reveals that cropping intensity, a proxy for agricultural productivity, decreases with increase in the

**Table 4.1: Land Distribution by Farm Size in Nepal, 1991**

Size of Holdings	Holdings		Total Area	
	Number	%	Hectares	%
No Land	32,109	1.2	1,571	0.1
Holdings with land	2,703,941	98.8	2,597,400	99.9
- Below 1 Ha	1,877,702	68.6	791,883	30.5
- 1-2 Ha	529,467	19.4	716,533	27.6
- 2-3 Ha	168,449	6.2	400,227	15.4
- 3-5 Ha	88,165	3.2	328,089	12.6
- 5 Ha and Above	40,158	1.5	360,669	13.9

Source: National Sample Census of Agriculture 1991 (CBS 1994b)

**Table 4.2: Percent Distribution of Farm Holdings and Area by Ecological Region, 1991**

Size of Holdings	Ecological Regions					
	Mountains		Hills		Terai	
	Holdings	Area	Holdings	Area	Holdings	Area
Landless	0.30	-	0.2	0.04	0.9	-
Below 1 ha	7.80	3.5	37.8	17.00	23.0	10.0
1-2 ha	1.30	1.8	8.6	12.20	9.4	13.5
2-3 ha	0.20	0.6	1.9	4.80	4.0	10.0
3-5 ha	0.10	0.4	0.8	3.10	2.3	9.1
5 ha and above	0.05	0.5	0.3	3.10	1.2	10.3
Total	9.75	6.8	49.6	40.24	40.8	52.9

Number of total holdings 2,736,056

Total area of holdings (hectares) 2,598,971

Source: National Sample Census of Agriculture 1991 (CBS 1994b)

**Table 4.3: Relationship of Cropping Intensity with Land Holding Size and Fragmentation**

Regions	Number of Districts	R-Squared	Estimated Coefficient Value		
			Total Holding in ha	No. of Parcels Per HH	Intercept
Mountains	15	0.45	-0.26 (1.89)	-0.30 (2.64)	2.33
Hills	39	0.15	-0.08 (2.34)	0.02 (0.36)	2.22
Terai	20	0.44	-0.24 (2.61)	-0.10 (2.46)	2.31

(Figures in parentheses indicate t-values)

Equation: Cropping intensity = a (intercept) + ln size of holding (ha) + ln number of parcels per household

Source: National Sample Census of Agriculture 1991

**Table 4.4: Structure of Tenancy, 1991**

Regions	Pure Tenants as % of Total Holdings	Mixed Tenants as % of Total Holdings	Area Rented as % of Total Land
Nepal	1.9	14.9	9.3
Mountains	1.1	12.0	5.8
Hills	1.2	11.8	4.6
Terai	2.7	18.8	12.9

Source: National Sample Census of Agriculture 1991

size of holding per household (Table 4.3). Thus redistribution of land has the potential to increase output and equity, hence the case for more equal distribution of land.

## 4.2 Tenancy

Table 4.4 presents information regarding the land tenancy situation in Nepal. Details are provided for three holding categories: (a) holdings of cultivated rented land only; (b) holdings engaged in more than one tenure arrangement (mixed tenure); and (c) rented area as percentage of total area of holding. About two per cent of the total farm holdings are pure tenants who do not have their own land. The proportion of such holdings varies across the ecological belts. In the *Terai*, 2.7 per cent of the holdings are of such a type.

The bulk of the holdings operate under mixed tenurial arrangements supplementing their own holdings with land obtained through tenancy arrangements (Table 4.4).

About 15 per cent of the total holdings are under the mixed tenancy form. Again, the incidence is much higher in the *Terai* where almost one-fifth of the total land holders are mixed tenants. In terms of area, land under tenancy (both pure and mixed) constitutes about 10 per cent of the total farmland in Nepal. Across the ecological belts, 13 per cent of the land in the *Terai*, and about five per cent of it in the hills and mountains, is under tenancy.

## 4.3 Fragmentation

Land fragmentation is considered to be one of the structural problems inhibiting the modernisation of agriculture. Because of the scattered nature of farm parcels, and in many instances due to their economically non-viable size, farmers are hindered from adopting productivity enhancing technologies that are otherwise readily available for them. The case of shallow tubewells is one example. Information on the extent of fragmentation

**Table 4.5: Land Fragmentation, 1991**

Regions	Average Parcels per Farm	Number of Parcels per Hectare
Nepal	3.96	4.2
Mountains	4.63	6.8
Hills	3.92	5.1
<i>Terai</i>	3.85	3.1
Source: National Sample Census of Agriculture, 1991.		

by ecological region is presented in Table 4.5.

Thus the main issues related to land ownership and tenancy are ceilings on land holdings, dual ownership of land, fragmentation of holdings, and landlessness among the rural households.

The combination of the existing legal provisions concerning inheritance and the present land ceilings would imply an increasing fragmentation and sub-division of land holdings as the society moves from one generation to the other. Experiences from other countries need to be shared in this respect.

In a nutshell, opportunities exist for a thorough review, from the policy perspective, of the implications of existing legal instruments vis-à-vis the present policies and then to introduce consistent amendments to these laws, rules, and regulations.

In the year 1995, HMGN formed a 'High Level Land Reform Commission' in order to study thoroughly the land issues and suggest corrective measures to the government.

This commission completed the study and the report is believed to be a useful document. This was submitted to the government, but it is not available to the public.

There has been an ongoing argument between the Departments of Agriculture and Forestry regarding what constitutes forest and agricultural areas. Encroachment of forests for crop production was in fact encouraged in the past with a view to raising land revenue. This encouraged the land scarce-hill dwellers to migrate to the *Terai* and settle there by clearing patches of forest land. Thus the *Terai* forest acted as a new frontier for the hill people. However, this frontier closed somewhere around the 1970s, but the problem of the landless encroaching on the forest continues to this day, albeit on a reduced scale. The policy related to illegal encroachment is not strong. Quite often, the squatters are moved and driven away by the government authorities. But, at other times, they are encouraged by the politicians of that particular area to break the law and stay in the forest area. They are also promised land ownership rights. This has long lasting socioeconomic and political implications. Such illegal settlements encourage other local residents to illegally occupy such land and registered it later. If these families are provided with some assistance from the government on humanitarian grounds, the neighbourhood becomes dissatisfied with the government, as they would also claim for all unmet demands. There may be inter-ethnic/community conflicts and clashes. Even politicians were found to be motivated to entice such settlers and enhance deforestation. This has been found to be true, particularly during election periods.

#### **4.4 Impact**

The above analysis reveals that land, the principal resource for people's sustenance, is quite inequitably distributed. On the other hand, there is evidence to show that smaller farms are more productive than larger ones. This would imply that redistribution of land is justified not only

on equity grounds, but also from the standpoint of economic efficiency.

Yet, the power elites in Nepal have only paid lip service to genuine land and tenancy reforms. The existing legislation has created confusion regarding land ownership to such an extent that both the land owner and the tenant are discouraged from making investments in land for quality improvement and productivity enhancement. The result has been a lack of long-term investment on land improvement and inadequate replenishment of nutrients. The process is being aggravated with the introduction of the new seed-fertilizer technology that demands intensive cropping patterns and heavy application of purchased inputs.

There is a widespread belief that there are much more tenant farmers than are shown by official records. The vast majority of the informally operating tenants are simply not recorded, for fear of eviction by the landowners.

Thus all the main features related to land ownership, tenancy patterns, and holding sizes are against investment in land improvement, productivity enhancement, commercialisation of farming, and sustainable resource management.

## 4.5 Gender

Available indicators (see Annex 1, Tables 2 and 3) show that Nepalese agriculture is gradually being 'feminised'. The percentage of economically active men in agricultural occupations is decreasing at a more rapid pace than for women. Similarly, within the total number of 'economically active' people engaged in agriculture, the proportion of women is increasing while that of men is decreasing. In terms of total time allocated to agriculture, a recent comparative study indicates that the number of hours spent by 'men' and 'boys' is decreasing while the time spent by 'women' and 'girls' is increasing (see Annex 1, Table 4) (Stri Shakti 1995).

These changes vis-à-vis the overwhelming role of women in Nepalese agriculture would imply that the choice of programme and technology should have a built-in bias in favour of women. As suggested by past experience, and incorporated in the Agriculture Perspective Plan (APP) approved by the Government in 1995, vegetable, livestock, and horticultural activities have this type of bias that not only provides employment opportunities but also contributes to empowering women economically.