

## **Balancing Access to Land for the Landless and Protection of Government and Public Land: The case of Sustainable Land Management in Nepal**

**Raja Ram CHHATKULI, Pragya PRADHAN, and Jagat DEUJA, Nepal; Hellen NDUNGU, and Victor OLONDE, Kenya**

**Key words:** Access to Land, Land Management, Legislation, Security of Tenure, Fit-For-Purpose Land Administration, Land Banking

### **SUMMARY**

With more than 57.3% of the population dependent on agriculture in Nepal, there is continued pressure to address the conflict between access to land for the poor and landless, and the protection of public and government land. With currently more than 1.34 million landless *Sukumbasi* and informal settler households operating *Ailani* land covering 25% of the total cultivable land, there is a grave concern among planners, environmentalists and bureaucrats on the protection of public and government land as they endeavour to heed to the needs of the landless and the voices of land rights activists to enable access and provide secure land tenure. With a diverse topography coupled with climatic variations Nepal is prone to a myriad of natural disasters including landslides, floods, among others. As such, a balancing act is required on the provision of land to the landless, protection of public and government land, while simultaneously pursuing tenure-responsive and risk-sensitive land use planning for sustainable land management in the country. The Government of Nepal through the Ministry of Land Management, Cooperatives and Poverty Alleviation has embarked on legislative reforms which have resulted into the development and adoption of the National Land Policy of 2019 and the amendment of the land legislation in 2020, facilitating actions towards the improvement of tenure security through the registration of land rights of landless squatters and unmanaged dwellers. UN-Habitat, the Global Land Tool Network and other local partners are engaged in collaborating with the federal, provincial and local level governments in these efforts.

This paper addresses the conflict between the need for access to land for landless populations and the protection of public and government land in Nepal, emphasizing the importance of secure land tenure and sustainable land management. UN-Habitat in collaboration with the Government of Nepal is implementing a project to support local municipalities in their efforts to provide secure land tenure to the landless *Sukumbasi*, the land-poor sharecroppers and contract farmers, develop tenure-responsive and risk sensitive land use planning and promote climate smart and sustainable land management practices. By employing the principle of environmental conservation and protection of land through utilization, and a fit-for-purpose approach to land administration, the project ensures that solutions towards access to land for the community and protection of government and public land are practical, flexible, and designed to meet the immediate needs of the community while remaining scalable for future improvements.

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### **1. BACKGROUND**

In a mountainous country with 2.2 million hectares of cultivable land and where more than 57.3% out of the 29 million population is dependent on agriculture (Census, 2021), showing a per capita availability to 0.13 ha, there is continued pressure to address the conflict between access to land for the poor and landless, and the protection of public and government land in Nepal. Whilst the system of feudal landlordism existed in Nepal till 1951 (Chhatkuli et al, 2019) the legacy on landlessness among the *Dalits*, the indigenous people and the ex-bonded labours like the *Haliya*, *Kamaiya* and the *Kamalaris* still continues. Due to its topographical and geological set-up, Nepal is one of the most vulnerable countries affected by natural and climate-induced disasters like the floods including glacial lakes and glacial lake outburst floods (GLOF) and landslides affecting hundreds of households every year, washing away their land and houses. Due to the historical injustices of feudal land governance and skewed land ownership patterns resulting the poor and vulnerable, such landless households and the victims of natural disasters are forced to squat on public and government land for their shelter and livelihood mostly in the fertile valleys and the plains in the Terai. Further, due to the disparity in the access to infrastructure, the basic health and educational facilities, and the economic opportunities, there is a tendency of migration from the hills and mountains to the fertile plains of the Terai and further to the urban areas. The trend escalated even more during the decade long period of armed conflict and weak governance from 1996-2006.

With more than 1.34 million landless *Sukumbasi* and informal settler households operating *Ailani* land covering 25% of the total cultivable land (Panday et al, 2021), there is a grave concern among planners, environmentalists and bureaucrats on the protection of public and government land vis-à-vis attending to the needs of the landless and the voices of land rights activists to enable access and provide security of land tenure. Protection of land and sustainable land management is of utmost importance in a country like Nepal with its diverse topography, fragile and complex geological setting coupled with climatic variations which has made it susceptible to various natural disasters in the past. Ensuring access to land to the landless may involve land distribution, provision of secure land tenure and other land leasing options while the protection of public and government land involves prevention of illegal possession and encroachments. These two proposed solutions for the protection of government and public land while ensuring landless citizens are able to access this land simultaneously are competing in the sense that they put pressure of the finite resource and in this case lands that are not formally registered in the national cadastre. In Nepal “Government land” refers to land owned by government entity or any other land under the custodianship of the government while “public land” is land under public use by tradition by groups of people and in most cases such

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government and public lands are out of the land registry. As such, a balancing act is required on the provision of land to the landless and protection of public and government land, together with simultaneously pursuing tenure-responsive and risk-sensitive land use planning and ensuring sustainable use and ecological balance for sustainable land management in the country. The paper will dwell on the policy and legislations on these vital and somewhat conflicting enunciations and provide some insights on undertaking land governance responses from select areas in Nepal.

## 2. HISTORY OF INTRUSION ON PUBLIC AND GOVERNMENT LAND

The history of land administration in Nepal dates back to the 5<sup>th</sup> century, and available documents reflect that land was not only the source of economy but also the main source of State revenue. With the limited population and abundance of land, the State did encourage cultivation of land. Until 1951, it was legitimate for the Shahs and Ranas rulers to grant public and government land as *Birta*, *Jagir* and *Guthi* at their will. The *Birta* and *Jagir* were awarded to the landholders who came from families and close connections with the ruling families (Chhatkuli et al, 2019). After the political change of 1951, and the success in the malaria control campaigns, disbursement of public and government land continued targeting the relocation of populations from the northern mountains to the fertile and relatively abundant land in the southern plains. The land reform programme was initiated in 1964, and the land redistribution targeting landless peasants and the poor and the vulnerable communities included disbursement of public and government land. Under the Government initiated land distribution programmes with different names from 1956 up to 2011, some 252,796 households were provided with 125,777 hectares of public and government land as below.

Table 1: Government and Public Land allocated 1956 to 2011 (Giri, 2024)

Sl. No.	Land distribution programme	Date	No of beneficiary HHs	Land distributed in Hectares	Average land area distributed per HH in Hectares
1.	Rapti Valley Development Programme (Chitwan)	1956 - -	5,233	27,786	5.31
2.	Nepal Resettlement Company	1963- 1989	19,292	26,458	1.37
3.	Resettlement Department	1968- 1988	73,435	39,909	0.54
4.	Landless Issues Resolution Commissions	1990– 2011	154,856	31,624	0.20
	TOTAL	1956- 2011	252,796	125,777	

As shown in the table above, beginning 1956 till 2011 majority of the household to benefit from the government programme was after the political change of 1989, when different landless issues resolution commissions constituted then allocated 31,624 hectares of government and public land to the 154,786 landless households which comprised more than 60% of all the

beneficiaries since 1956. The table also shows a decreasing trend in land allocation from 5.61 hectare per household in the 1950s to 0.20 hectare per household after the political change of 1989. This could suggest the prioritization of the two issues, i.e., providing secure tenure to a number of landless households for shelter while addressing the greater concern of protecting government and public land. The programme was halted in 2011 after the court directive citing lack of firm legislative backing while issues related to land to the many other landless for shelter and livelihood purposes remained. The National Land Policy of 2019 and the 8<sup>th</sup> Amendment to the Land Act in 2020 filled the legislative vacuum and paved way for taking forward the process.

The provision to allocate land to the landless under the auspices of the land commissions constituted after 2020 following the 8<sup>th</sup> Amendment to the Land Act and the 18th Amendment to the Land Rules is operational countrywide guided by a recommended ceiling of land to be disbursed. Given the implementation of a land ceiling for either for housing or the agriculture purpose as following and the fact that the land to be allocated or the informal tenure to be regularized will primarily be where households have resided for at least the last 10 years, no additional encroachment on government or public land is anticipated.

Table 2: Ceiling of land to be allocated to landless Dalit or landless Sukumbasi Household (18<sup>th</sup> Amendment Land Rules)

Region	Area of Land for Housing purpose	Area of Land for Agriculture purpose	Remarks
Kathmandu Valley and any urban municipalities	130 sq.m.	Not Available	May provide alternate provisions for housing.
Rural areas in Terai and Inner Terai	340 sq.m.	2,000 sq.m.	May be provided either of the two.
Rural areas in mountainous regions	340 sq.m.	3,000 sq.m.	May be provided either of the two.

Note: *Dalit* is a caste enlisted by the *Dalit* Commission. The landless *Dalit* or landless *Sukumbasi* is defined as a *Dalit* or other person who has no registered land on his own or in the name of any family members and can not procure a piece of land on own or family income.

Table 3: Ceiling of informal land tenure to be regularized operated by informal settlers Household

Region	Area of Land for Housing purpose	Area of Land for Agriculture purpose	Remarks
Kathmandu Valley and any urban municipalities	130 sq.m.	Not Available	May be displaced if land falling on e list given in Section 3 below.
Other rural areas	1,000 sq.m.	10,000 sq.m.	May be provided either of the two. May be displaced if land falling on list given in Section 3 below.

Note: An informal settler is a person who has a piece of land registered in their own name or any other family member's name in the country and operating the land under informal tenure for at least 10 years.

### 3. LAND GOVERNANCE POLICIES RELATING TO LAND TENURE AND PROTECTION OF PUBLIC AND GOVERNMENT LAND

The key land governance policies are reflected in the Constitution of Nepal adopted in 2015 and the National Land Policy of 2019. Subsequently their implementation framework and strategies are reflected in different legislation, plans and programs of the Government of Nepal including the federal and local governments constituted after the State restructuring into a federal set-up. The constitution of Nepal enunciates rights to housing and right to food as fundamental rights of the citizens and recognizes access to land and security of tenure a foundation of this. Providing land to the landless *Dalits* and access to land to the peasants is guaranteed. At the same time, the constitution also enunciates that the protection of public and private land is the fundamental duty of all (GoN, 2015). Based on the basic tenets of the Constitution, the policy and legislation are guided by the principles of ensuring equitable access to land and protecting public and government land. The Government of Nepal through the Ministry of Land Management, Cooperatives and Poverty Alleviation has embarked on legislative reforms which have resulted into the development and adoption of the National Land Policy of 2019 and the amendment of the land legislation in 2020, and in collaboration with UN-Habitat, the Global Land Tool Network and other local partners facilitating actions towards the improvement of tenure security through the registration of land rights of landless squatters and unmanaged dwellers. The Land Use Act of 2019 followed by Land Use Rules and Regulations of 2022, and Land Use Programme Implementation Guidelines of 2024 provide structural and institutional framework for tenure responsive, and risk sensitive land use planning and sustainable land management based on participatory and people-centred approach.

The Constitution of Nepal, the National Land Policy of 2019, and the subsequent reform in the Land Act in 2020 underlines land rights as fundamental rights and confirm to provide land to the landless *Sukumbasi*, that includes landless *Dalits*, indigenous communities, ex-bonded labours, and the marginalized communities, and security of tenure for all, including informal settlers. To implement these provisions, the Land Issues Resolving Commission (LIRC) was constituted in April 2020 as a national level special purpose institution with sub-national structures, dedicated to providing land to the landless and regularization of informal tenure and to issue land ownership certificates to the landless and informal tenure households. With the change in the Government in 2021, the LIRC was dissolved, and a new National Land Commission (NLC) constituted in September 2021. With yet another change in coalition of the Government, the NLC was dissolved in March 2024. Reconstitution of a new land commission is eagerly awaited.

The 8<sup>th</sup> amendment in 2020 to the Land Act (1964) and subsequent 18<sup>th</sup> Amendment to Land Rules (1964) specifically mentions that suitable land is allocated to the landless, and that land under operation by the landless and informal settlers on vacant government land, including land designated as forest land in the records, but without standing forest or being under cultivation

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for more than 10 years- may be regularized and provided with land ownership. The Forest Act of 1976 defines all land as forest, except registered as private land, including naked hills whether covered with snow or otherwise. The term 'forest' falls within the definition of government land. The Forest Act includes provisions to prevent the conversion of forests to other land uses, indicating to the issue of forced evictions of vulnerable landless and indigenous communities living under informal tenure on unregistered *Ailani* land, which falls under the definition of public and government land. To address this conflict, the 8th Amendment to the Land Act provides for allocation of land to the landless and regularization of land without standing forest although registered as or falling under the definition of "forest" and categorically restricts to allocation of land to the landless and regularization of informal tenure of land falling into the categories listed as following:

- Land under religious, cultural and strategic importance,
- Land considered for conservation due to natural risks, disaster management and environmental protection,
- Public land, land by the banks of rivers, stream and canals, land in the risk zones, land in the national parks and conservation areas, forest land covered with standing trees, and land within the right of way of roads,
- Land designated for use by the federal and provincial governments and local levels.

The Constitution of Nepal provides for sole and concurrent power on land tenure, land use, land management, and land governance with and between the three tiers of the government namely the federal, provincial and local governments. The constitutional provisions of federalization in land governance are yet to be fully implemented (UN-Habitat, 2022 & Bhatta, 2024). However, there are clear provisions in legislation which assigns the land revenue and the land survey authorities to maintain public records and the concerned government entities, the district administration and the local level governments to protect and preserve the government and public land (Bhusa, 2024). Specific provisions are provided in different land tools like the federal, the provincial and the local annual policies, programmes and legislation.

#### 4. STRATEGIC INTERVENTIONS: A CASE STUDY

Addressing issues relating to security of tenure and access to land, and sustainable land management through tenure-responsive, risk sensitive and inclusive land use planning is under implementation in Deukhuri valley of Dang district in Nepal through the support of UN-Habitat. It focuses on the four municipalities Gahawa, Rajpr and Rapti rural municipalities and Lamahi municipality, where over 60.6% of the households mainly from the Tharu indigenous communities are operating land under insecure tenure, making these reforms crucial for the local population. The area falls in the foothills of Mahabharat mountains along the axis of the Siwalik range with a fragile geology, eroded by the Rapti river and several streams flowing down from the Mahabharat range. As such the valley is prone to a combination of human and natural disaster risks necessitating interventions in land tenure, land use and climate smart and sustainable land management. The support at the local level includes the participatory enumeration, identification, verification and recordation (IVR) of landless and informal settlers to facilitate government efforts to provide access to limited land to the landless and

**Kommenterede [HN1]:** This is not clear; please look at it again.

**Kommenterede [VO2R1]:** The term 'forest' falls within the definition of government land (ref). While the Forest Act includes provisions to prevent the conversion of forests to other land uses, it also indirectly addresses the issue of forced evictions of vulnerable landless and indigenous communities. These communities often live under informal tenure on unregistered *Ailani* land, which is classified as public and government land

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regularization of informal tenure. The land titles through this process will make the landless own piece of land and strengthen their community purpose but the amount of land is substantially short of providing for adequate livelihood to the land dependent peasant household. The project supports the government at the three tiers (the federal, provincial and the local level) to provide additional land to the poor and vulnerable families through land banking (Chhatkuli et al, 2024).

In the next section, we provide a typical case of land under informal tenure in the riverbed of Rapti river in Gadhawa Rural Municipality (RM) and the different policy instruments developed by the federal, provincial and the local level governments to address similar issues considering both together i.e. providing access to the land to the landless and making the best possible protection of public and government land.

#### **4.1 CASE OF PRASIYA COMMUNITY IN GADHAWA RURAL MUNICIPALITY**

The area is located in the southern flood plain of Rapti River in Ward No 5 north of Prasiya village in Ward No 5 of Gadhawa RM. Nearly 11 hectares of the the abandoned riverbed *Ailani* land was first occupied by some 36 poor and vulnerable families some 20 years back. More families started to join in cultivating the degaraded, disused and abandoned riverbed in the area and currently approximately 76 hectares is under operation by 117 households comprising of mainly *Ex-Kamaiya* and *Ex-Kamalari* families. The Government abolished the bonded agriculture labourer system called *Kamaiya* in 2000 and the bonded houseld helper system called *Kamalari* in 2013 and promised some rehabilitation programme but the field observation showed that the rehabilitation programme has not yet reached to all of them and for those who have benefitted from the programme this was felt inadequate for a livelihood, and hence bound to squat in the riverbed land. Out of the 117 households 113 or 97% households belong to the indigenous Tharu community. Having limited land of their own most of them may be termed into the category of unmanaged or informal settlers. The resource map prepared by the local community shows the river in the north, the *Ailani* land occupied by them to the south and below that the registered land of other landowners from the village and the Prasiya village itself. Additional to operating this land under informal tenure several households with limited land operate land under different verbal contracts or sharecropping arrangements belonging to the land owned by landowners who cannot till on their own. Access to these land resources supplement their subsistence needs. However, in the recent past, different commercial companies and other entrepreneurs have visited the area in search of land for commercial farming promising higher rent to the landowners. As such, the current tenants from indigenous Tharu community operating land for subsistence are in constant fear that the landowners may evict them and anytime cancel the verbal contract or the sharecropping arrangements. All the 117 households have been enumerated in the IVR process for regularization of informal tenure and received the Temporary Card (*Asthai Nissa*) from the RM but with the rumor that the RM plans to invest into tourism development around the area, the fear about imminent eviction from this land is largely expressed by the local community. In a group discussion, the municipality authorities have explained their plan to fully honour the access to land to the landless and regularization of informal tenure policy of the government and to utilize the surplus

public/government land in the area after due consideration and allocate it to needy farmers without forcefully evicting those who currently reside on these lands.

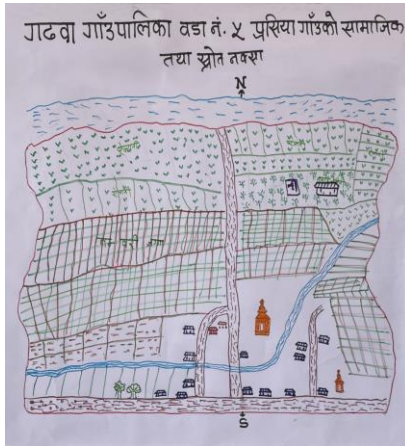


Figure 1: Resource Map of area prepared by the local community (Source; community in the project area)

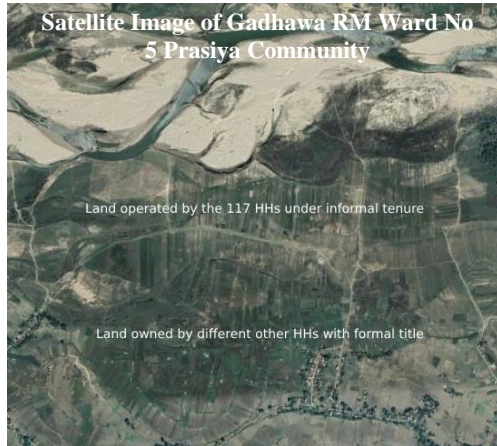


Figure 2: Satellite Image of the Area (Source Google Map)

#### 4.2 PROTECTION THROUGH UTILIZATION

The three tiers of Government- federal, provincial and local level- under the present federal governance set-up in the country have committed to utilize the vacant and barren private, public and private land as outlined below, with a view to resolve issues on land tenure security as well as protect and maintain the ownership of private, public and government land.

The federal government in its Fiscal Bill for the Fiscal Year 2024-85 has committed (GoN, 2023) as following:

- The Government will facilitate management of five hundred thousand landless *Dalit*, landless *Sukumbasi* and unmanaged settlement households having informal land tenure through issuance of land ownership certificates.
- The Government will manage to provide government, public, riverbed and private land left vacant for agriculture use with recordation at the local level. The Government will manage to provide government land on lease for community farming.

The Lumbini provincial government is more specific and in its Fiscal Bill for the Fiscal Year 2024-85, it has committed (Lumbini, 2024) as follows:

- Policy to utilize vacant land will be brought into implementation. To improve the production and productivity of vacant land, contract farming programme will address the target group. Land banking concept will be brought into operation and riverbed agriculture promoted in cooperation and coordination with local levels.



- Necessary facilitation will be provided in the survey and enumeration, and issuance of land ownership certificates to the resolution of landless and informal tenure issues.

Gadhawa RM has made provisions to address to land tenure security and access to land in its local programme, guidelines and legislation as following:

- Gadhawa RM has completed the enumeration of landless *Dalit*, landless *Sukumbasi* and informal settlers in RM and is currently working on finalizing verification, recordation, and surveying of land parcels towards issuance of land ownership certificates. By July 2024, 7,447 households including 319 landless *Dalit*, 1,106 landless *Sukumbasi* and 6,022 informal settlers have been enumerated and temporary cards (*Asthai Nissa*) have been distributed to 7,394 households which include the 117 families of Prasia community.
- As of July 2024, the project team had identified at least 78 hectares of unutilized private, government or public land available. This is still ongoing..
- One of the priority areas of the policy and programme passed by Gadhawa RM highlights resolving the issue of landless *Dalits*, landless *Sukumbaasi* and Informal Settlers.
- Gadhawa RM has approved local legislation to encourage utilization of private, public and government land through contract farming. This is designed to facilitate access to land for the landless and land-poor marginalized farmers. Key points addressed in the legislation are conservation of agricultural land, utilization of unutilized land suitable for agriculture, provision of contract farming with the concept of *willing lessee willing lessor*, riverbed cultivation and utilization of public and government land for agriculture. (Gadhawa, 2024)

## 5 DISCUSSIONS

Due to several reasons, there is a growing tendency to squat on government and public land and subsequently claim ownership over such land. There may be genuine reasons for the landless, the landless *Dalits* and the landless *Sukumbasi*, due to long history of marginalization and natural disasters. But rhetoric is famous- the *Hukumbasi* or the powerful encroachers who want to grab public and government land for personal gain rather than necessity are always present. As a matter of social justice, the need of *Sukumbasi* must be addressed and the *Hukumbasi* filtered out. Applying the GLTN Social Terrain Domain Model (STDM) principles, and the participatory enumeration processes has facilitated the identification, verification and recordation (IVR) of genuine landless *Dalits*, landless *Sukumbasi* and the informal settlers. Even after more than 250,000 landless households were provided with land by 2011, a more recent estimate suggests the need to address the issue of landlessness for additional 1.34 million households. However, it is estimated that less than 20% out of this number are landless and the rest are informal settlers. With the ever-growing population and tendency of partition of households, the State may not be in position to provide land to the landless forever. While there is a need for addressing the needs of landless and land-poor peasants to access land for shelter and livelihood, protection of government and public land is equally important. The approach in place in Nepal is to provide small pieces of land on full ownership and provide access to additional land to the subsistence farmers to support their livelihoods through secured contract

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while protecting the ownership of the related private, public and government entity. The declining trend of the volume of land allocated to the landless from 5.31 Ha per HH in 1956 to 0.20 Ha per HH in 2011 and the ceiling of land allocated in different set-ups through the latest land legislation, and the policy, programme and legislation for land banking based on *willing lessee willing lessor* principle, contract farming and utilization of unutilized public and government land aptly signifies the concept of balancing access to land for the landless and protection of government and public land for sustainable land management operational in Nepal.

## 6 CONCLUSIONS AND RECOMMENDATIONS

With a growing tendency of migration from the mountains to the plains, subsequently to urban centres and emigration to other countries for overseas employment, while also considering the country's susceptibility to natural disasters, Nepal faces different issues on land tenure, land use and sustainable land management. The National Land Policy of 2019 dwells on addressing multi-fold land governance issues. However, the area is complex, requiring knowledge, capacity building of land practitioners, time and multiple resources. The current efforts are more on prioritizing the very fundamental issues, e.g. security of land tenure, land use and sustainable land management for improving the livelihoods of the most marginalized. Access to land is necessary, but equally important is the protection of government and public land. The land governance policies, programmes and strategies at the federal, provincial and the local levels are directed towards this; even so, successful implementation is a challenge. The experience from the ongoing work from select areas in Nepal provide some insights on undertaking land governance response to scale-up to other areas.

With the ever-growing population and limited land resource, the country cannot always promise security of land tenure to its citizen through formal title on land. Alternate provisions like leaseholds and secured contracts are reasonable options. With the growth in economy and changing values, it is hoped that the poor and vulnerable will take to alternate means of livelihood, will not remain poor for ever and compulsion for encroachment on public and government land will not remain and therefore the pressure for title for a piece of land will decrease, however stricter governance for control of encroachment from the *Hukumbasi* may always be necessary. For this economic development, policy, practice and effective land administration and land management, good land governance should go together. When the current phase of providing land to the landless and regularization of informal tenure is completed, it is recommended that the three tiers of government concentrate on a stronger governance where encroachment on public and government land is restricted and halted altogether.

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Climate Responsive Land Governance and Disaster Resilience: Safeguarding Land Rights

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## BIOGRAPHICAL NOTES

Raja Ram Chhatkuli is a land professional with a long experience in land administration in Nepal. He is currently affiliated with UN-Habitat Country Office in Nepal. Email: [raja.chhatkuli@un.org](mailto:raja.chhatkuli@un.org)

Pragya Pradhan Habitat Programme Manager at UN-Habitat Nepal. She is an urban and regional planning expert with long experience in disaster risk management and risk sensitive land use planning. Email: [pragya.pradhan@un.org](mailto:pragya.pradhan@un.org)

Jagat Deuja is Executive Director of Community Self Reliance Centre (CSRC), a pioneer NGO dedicated to land rights for all. He previously served as an Expert Member of Land Issues Resolving Commission in Nepal. Email: [deujaj@csrcnepal.org](mailto:deujaj@csrcnepal.org)

Hellen Ndungu is a programme management officer working with the Global Land Tools Network (GLTN) within the Land, Housing and Shelter Section of the UN-Habitat headquarters in Nairobi. . Email: [hellen-nyamweru.ndungu@un.org](mailto:hellen-nyamweru.ndungu@un.org)

Dr Victor Olonde is a Land Administration Expert at the Global Land Tool Network (GLTN) within the Land, Housing and Shelter Section of the UN-Habitat. He has over twenty years of experience working in his areas of expertise including Land Administration, Valuation, Housing and Urban Development. Prior, he was an Assistant Director Land Valuation at the Department of Valuation, Ministry of Lands, Public Works, Housing and Urban Development of the Government of Kenya. Email: [victor.olonde@un.org](mailto:victor.olonde@un.org)

## CONTACTS

Mr Raja Ram Chhatkuli  
UN-Habitat  
Sanepa Heights, Lalitpur  
Kathmandu  
NEPAL  
Tel. + 977 1 5451091  
Email: [raja.chhatkuli@un.org](mailto:raja.chhatkuli@un.org)  
Web site: [www.unhabitat.org.np](http://www.unhabitat.org.np)

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