

LEGISLATIVE PROVISIONS REGULATING WOMEN'S ACCESS AND OWNERSHIP OF LAND AND PROPERTY IN NEPAL



International Organization for Migration

© International Organization for Migration
First Published 2016

Research Team

Dipina Sharma Rawal, IOM Nepal

Jagat Basnet, Community Self Reliance Centre (CSRC)

Khushbu Agrawal, IOM Nepal

Technical Review Team

Ina Jahn Rehema, IOM

Ivan Karlsson, IOM

Jitendra Bohara, IOM Nepal

Peter Van der Auweraert, IOM

Cover Photo Credit : Marta Chiara Biffi/IOM Nepal

The opinions expressed in the report are those of the authors and do not necessarily reflect the views of the International Organization for Migration (IOM). The designations employed and the presentation of material throughout the report do not imply the expression of any opinion whatsoever on the part of IOM concerning the legal status of any country, territory, city or area, or of its authorities, or concerning its frontiers or boundaries.

IOM is committed to the principle that humane and orderly migration benefits migrants and society. As an international organization, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration; advance understandings of migrations issues, encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

ACKNOWLEDGEMENTS

The report on “Legislative Provisions Regulating Women’s Access and Ownership of Land and Property in Nepal” is produced as a part of the joint project of International Organization for Migration (IOM), United Nations Development Programme (UNDP) and United Nations Human Settlements Programme (UN-Habitat): “Empowering Women for Women (W4W): Access to Land for Sustainable Peace in Nepal”, funded by the United Nations Peacebuilding Fund (UNPBF).

First and foremost, we would like to thank **Mr Nagendra Jha**, Joint Secretary at the Ministry for Land Reform and Management (MoLRM), **Mrs Radhika Aryal**, Joint Secretary at the Ministry of Women, Children and Social Welfare (MoWCSW) and **Mr Jib Raj Koirala**, Joint Secretary at the Ministry of Peace and Reconstruction (MoPR) for their support and guidance during the entire study period. We would also like to thank all the individuals from the Government, civil society, members of the Parliament, international experts who took time to share their views and experiences in relation to women’s rights to land and property which greatly helped us to enhance our understanding of the situation of women’s land rights in Nepal.

Lastly, we would like to thank our project partners UNDP and UN-Habitat, and the United Nations Peace Fund for Nepal (UNPFN) team for their support during the process of writing this report.

June 2016

TABLE OF CONTENTS

ACRONYMS	III
EXECUTIVE SUMMARY	IV
PART I: INTRODUCTION, OBJECTIVES AND METHODOLOGY	1
1.1 BACKGROUND	1
1.2 OBJECTIVE OF THE STUDY	2
1.3 METHODOLOGY OF THE STUDY	2
PART II: LAND RIGHTS IN PRACTICE AND GAPS TOWARDS GENDER EQUALITY IN NEPAL	3
2.1 INTERNATIONAL TREATIES AND PROVISIONS ON WOMEN’S LAND RIGHTS	3
2.2 NATIONAL LAND POLICIES, LEGISLATION AND WOMEN’S LAND ACCESS	7
2.3 AN OVERVIEW OF WOMEN’S LAND RIGHTS IN NEPAL	10
2.4 CUSTOMARY PRACTICES ON WOMEN’S RIGHTS TO ACCESS LAND	12
2.5 BARRIERS FOR WOMEN’S LAND RIGHTS	13
PART III: INTERNATIONAL EXPERIENCES-BEST PRACTICES ON GENDER RESPONSIVE LAND TENURE SECURITY AND OWNERSHIP	17
3.1 REVIEW OF INTERNATIONAL LEGISLATIONS AND PRACTICES	17
PART IV: CONCLUSION AND RECOMMENDATIONS	21
4.1 CONCLUSION	21
4.2 RECOMMENDATIONS	21
REFERENCES	23
ANNEX A: NAME LIST OF FOCUS GROUP DISCUSSIONS AND INTERVIEWS	26

ACRONYMS

CBS	Central Bureau of Statistics
CDS	College of Development Studies
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEPAD	Center of Studies for Peace and Development
CPN-ML	Communist Party of Nepal-Marxist and Leninist
CSRC	Community Self Reliance Center
DDC	District Development Committee
GEC	Gender Evaluation Criteria
GLTN	Global Land Tool Network
ICERD	International Covenant on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IOM	International Organization for Migration
MDGs	Millennium Development Goals
MoLRM	Ministry of Land Reform and Management
NLRF	National Land Rights Forum
OHCHR	Office of the United Nations High Commissioner for Human Rights
STDM	Social Tenure Domain Model
UN	United Nations
UDHR	Universal Declaration of Human Rights
USAID	United States Agency for International Development
VDC	Village Development Committee

EXECUTIVE SUMMARY

Land is a scarce resource and hence contested. The demands to ensure land rights for everyone have come from all quarters. Yet, this valuable resource continues to be concentrated among the powerful, those with the means to do so, particularly men. It cannot be overstated that rights to land are undeniably important, more so for women. Women's access to, use of and control over land are essential not only for enhancing their livelihood options and strengthening their bargaining power within the household and the community, but also for improving their access to financial resources and reducing domestic violence. In addition, secure land rights empower women to challenge and overcome gender inequities; contributes to household welfare through better nutrition and food security and increases women's agricultural productivity, thereby contributing to nation's economic development and sustainable peace.

In Nepal, approximately 73 per cent women are engaged in agriculture, contributing to all stages from management to marketing. Ironically, however, women rarely have legal ownership of the land they till. In the absence of a certificate of ownership of land, they are perceived as homeworkers by the Government of Nepal and not as farmers, underscoring their contribution to the national economy. According to the 2011 population census, only 19.71 per cent of households have female ownership over land and property in the country. These numbers are testimony to the large gap that exists in realizing women's right to land and property.

Nepal has ratified, assessed or voted for a number of international treaties and instruments, including the Universal Declaration of Human Rights, Convention on Political Rights of Women, Convention on the Elimination of All Forms of Discrimination Against Women, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, United Nations Declaration on the Rights of Indigenous Peoples and many more. The common voice of all these international treaties and convention is equality between men and women and women's right to access, own, use and control over land and property. In line with these international treaties and instruments, Nepal has taken a number of positive steps, including the Eleventh Amendment of the *Muluki Ain* (Civil Code), which addressed a number of concerns in terms of gender disparities in relation to land and property. Similarly, the Interim Constitution of Nepal 2007, the Financial Bill 2015 and most recently the Constitution of Nepal 2015 have all, to a large extent, addressed women's property rights. Despite these progressive steps taken in terms of women's land rights, there are a number of barriers that women continue to face in truly realizing their rights.

First of all, there still are gaps in policies regarding women's right to land. For instance, the Eleventh Amendment of the *Muluki Ain* 2002 is still discriminatory towards women. Although women have rights over their ancestral property either as a daughter or wife, in practice, they cannot compel their parents to give their share of property while their parents and husbands are alive. Second, traditional and patriarchal mindset still exists which is hindering full-fledged implementation of the new policies and practices. For instance, cultural stigma promotes the belief that sons are considered as future caretakers of parents, whereas daughters are married off into another family. As a result, regardless of what the laws say, it is only sons who are

regarded as the heirs, which acts as an obstacle for women to inherit family land and property. Third, there is lack of gender sensitive programming and practices within the Government system. There is no budget allocation for programmes to secure women's land rights at local or district levels. Additionally, there is limited outreach by the Government on the existing provisions to promote tenure security of women on land. As a result, many women have not been able to take advantage of the legal provisions set for them.

The situation can be improved if the Government takes some positive steps. There needs to be strong implementation of provisions of women's property rights, as well as laws and bylaws at the grassroots level. Additionally, new laws need to be enacted in line with the Constitution of Nepal 2015. Similarly, Village Development Committees and District Development Committees should allocate sufficient budget for women's land rights and specific programmes on women's tenure security on land. There is also a need to develop and implement a comprehensive and systematic outreach strategy to sensitize communities regarding women's land rights and enhance awareness ensuring women's access to these legislative provisions for promoting tenure security on land. Finally, proactive participation of women should be ensured in the process of formulation of policies and programmes to enable them to claim land resources and secure their rights.

This report talks in depth about all of these aspects, including the legal provisions guiding women's access to land and property in Nepal, the gaps in those policies, as well as the barriers that women face to access, own and control land. In doing so, the report also looks at examples from 10 different countries in Asia, Africa and Latin America so as to provide the Government of Nepal with recommendations to introduce progressive programmes and policies in relation to women's land rights in the country.

PART I

INTRODUCTION, OBJECTIVES AND METHODOLOGY

1.1 BACKGROUND

Women's ownership of land not only enhances their livelihood options, but also the socioeconomic well-being of their families and societies. Studies have shown that women tend to spend a larger proportion of their incomes from employment or assets on family or household needs – especially children's needs such as education, health and entertainment – in comparison to men, who tend to spend a significant portion on personal goods (Agarwal, 2013).

In Nepal, more than 73 per cent of women are engaged in agricultural production – contributing in all stages from management to marketing. Women are the primary source of labour in small and medium farms. Even in large farms, their labour contribution is equivalent to that of men. However, women rarely have legal ownership of the land they till. According to the 2011 population census, only 19.71 per cent of households have female ownership over land and property in the country. Their main access to land is through their relationship with their husbands and/or father in-laws. This means that women are considered secondary owners of the land, which is owned legally by their husbands or their father in-laws or other male members of the family. Without a certificate of ownership of land, they are not viewed as farmers and are instead perceived as homeworkers by the Government and the general public at large. At the heart of it lie the women's unequal rights to land in Nepal, which remain, in fact, one of the most unequal in all of South Asia (Karki and Basnet, 2012).

Although the Government of Nepal has made attempts for land reform, they have not been completely effective in improving women's access to or ownership of land. One such example is the Land Reform Act 1964 AD and its subsequent revisions, which was enacted to provide land to tenants or secure the tenancy rights of tillers who are tilling their landlord's land. However, this Act was not able to institute women-centric land reform or tenancy reform. It was only after 2000 that some positive policy interventions and improvements have taken place. For instance, Eleventh Amendment of the *Muluki Ain* (Civil Code) in 2002, Gender Equality Act 2006, the Interim Constitution of Nepal 2007 and the most recent Constitution of Nepal 2015 have provisions ensuring women's equal access to parental or inherited property. However, due to prevailing patriarchal traditional practices in Nepal, women continue to be marginalized in terms of land ownership.

Some of the women-centric land reforms, as mentioned earlier, comprise promoting community-sharing of resources under ownership of women's groups; giving women individual ownership and joint ownership of land resources; allocating adequate budgets and trainings for women; transforming the existing feudal and patriarchal gender relations; ensuring single women's land rights and taking steps to reverse the adverse impact of neo-liberal policies on agrarian society. The extent of the relevance of these land reform measures to women in the Nepalese context need to be analysed in light of the sociocultural and environmental factors.

This study reviews the practical implementation of the legal provisions in place to promote women's access to and ownership of land in Nepal. It also reviews the best practices in terms of constitutional, legal and programmatic interventions to improve women's access to land and tenure security both at a national and international level, which can serve as guidance for the Government of Nepal for future interventions. Based on an extensive literature review, the study summarizes the gaps, strengths and weaknesses of existing programmes and policies and provides recommendations to address the identified gaps in order to enhance women's access to land and tenure security.



The report is divided into four sections. The first section consists of the introduction, objectives and methodology of the study. The second section assesses Nepal's policies and programmes on women's access to land and tenure security. The third section reviews the international practices, programmes and legislations on women's access to land and tenure security in different countries from Asia, Africa and Latin America. The fourth section contains the summary of the reviews and recommendations on improving women's access to land and tenure security in Nepal.

I.2 OBJECTIVE OF THE STUDY

The objective of this study is threefold and aims to:

- Provide a review of existing legislative provisions that guide women's access to and ownership of land and property in Nepal and to identify gaps towards gender equality therein.
- Map-out customary practices relating to women's rights to access land in Nepal.
- Identify international best practices with an aim to inform the Government of Nepal on how to design policies and programmes for promoting women's entitlement to land and property in Nepal.

I.3 METHODOLOGY OF THE STUDY

The current study was conducted between October 2015 and March 2016. In the course of the study, both primary and secondary data was collected and analysed. Different methods were employed, including literature reviews, consultation with Government and non-Government institutions, community members and policy makers.

Literature review:

For the literature review, a web search helped to identify relevant documents and reference materials. International literature was reviewed to identify best practices towards improving women's access to land. Ten countries were selected for review of their land policies and other legal measures. The selection is based on the availability of literature on countries in Asia, Latin America and Africa. Additionally, national legislation, policies, programmes and practices were also reviewed.

Consultations:

Formal and informal consultations were conducted with community members, policymakers and women's rights activists in Nepal, international land rights advocates, members from International Land Coalition (ILC) and others who have been working with issues of women's access to land in their respective countries. The informal consultations were carried out with international participants of the ILC Asia Assembly organized by the International Land Coalition during the month of October 2015 in Chiang Mai, Thailand and the Economic and Political Citizenship workshop organized by Coady International Institute Canada during the month of December 2015 in Jakarta, Indonesia. The formal consultations consisted of three focus group discussions, five semi-structured interviews (SIs) and more than 10 informal discussions with ILC members in Thailand, the Philippines and Indonesia; community-based organizations (CBOs) in Indonesia and Kathmandu; the Community Self Reliance Centre (CSRC); National Land Rights Forum (NLRF); members of Parliament in Nepal; representatives of political parties and representatives of officials from the Ministry of Land Reform and Management (MoLRM) in Nepal.¹

¹ A full list of individuals consulted during the course of the study has been provided in the Appendix.

PART II

LAND RIGHTS IN PRACTICE AND GAPS TOWARDS GENDER EQUALITY IN NEPAL

This section reviews the commitment of the Government of Nepal on international treaties, conventions and instruments along with the commitment made towards designing gender responsive policies and practices. The section further reviews the national legislative provisions in relation to women’s land and property rights and identifies existing gaps in the current policies and processes.

2.1 INTERNATIONAL TREATIES AND PROVISIONS ON WOMEN’S LAND RIGHTS

The Government of Nepal has ratified a number of international instruments relating to women’s rights to property ownership, particularly after the restoration of democracy in 1990. The Government passed a separate Treaty Act in 1991 to ratify accession to these International Conventions. In Section 9 of the Treaty Act 1991, it states that once a treaty or international instrument is ratified, acceded to, accepted and approved by the Parliament, it shall be enforceable as national law. In the event of contradictions between prevailing municipal law and the treaty, provisions would be implemented as national law (Dhaatri Resource Centre for Women and Children - Samata 2010). Nepal has ratified, acceded to, accepted and voted for the following International Treaties and Conventions related to women's rights to land.

S. No.	International Instruments	Ratification or Accession Date	Relevant description
1	Universal Declaration of Human Rights (UDHR)	1948	Article 17 of the UDHR states that “Everyone has the right to own property alone as well as in association with others,” and that “No one shall be arbitrarily deprived of his (her) property.” Similarly, Article 25 considers right to food, shelter and clothing as basic human rights.
2	International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD), 1965	30 January 1971	The Covenant calls State Parties to prohibit and eliminate discrimination in all forms and to guarantee right to everyone, without distinction as to race, colour, or national or ethnic origin. Article 4 lists down a number of rights to be enjoyed by all, including the “right to own property alone as well as in association with others,” “right to inherit,” and “right to housing.”

S. No.	International Instruments	Ratification or Accession Date	Relevant description
3	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979	22 April 1991	The Convention requires State Parties to “take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, they participate in and benefit from rural development including right to access to credit and loans, access to housing and the right to participation.” It also calls for “equal treatment in land and land resettlement schemes” (Article 14.2). Article 15.2 calls on States to accord women equal legal capacity in civil matters, in particular “equal right to conclude contracts and to administer property.” Similarly, according to article 16.1, States must ensure “the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”
4	International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	14 May 1991	The Covenant calls on States parties to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant” and prohibits discrimination based on sex. The Covenant also recognizes the rights to food, housing, education, health, culture, work and association (Article 11). Similarly, General Comment 7 ² of the Committee on Economic, Social and Cultural Rights notes that “forced evictions are prima facie incompatible with the requirements of the ICESCR,” and General Comment 12 specifies ensuring access to “food or resources for food” requires states to implement full and equal access to economic resources, including the right to inheritance and ownership of land, for all people and particularly for women.
5	International Covenant on Civil and Political Rights (ICCPR) 1966	14 May 1991	The Covenant guarantees equality between women and men and prohibits discrimination based on sex, among other grounds. The Covenant also recognizes the rights to life, private and family life, liberty and security of person, equality before the courts and tribunals, information, freedom of movement, association, assembly and expression, freedom from torture and cruel, inhuman or degrading treatment, self-determination, equal protection of the law, participate in public affairs and remedies.

² General Comments, adopted by the Committee on Economic, Social and Cultural Rights, are authoritative interpretations of the ICESCR.

S. No.	International Instruments	Ratification or Accession Date	Relevant description
6	International Conference on Population and Development (ICPD, Cairo 1994)	September 1994	Article 4.6 under Chapter 4 on Gender Equality, Equity and Empowerment of Women notes that “Governments at all levels should ensure that women can buy, hold and sell property and land equally with men, obtain credit and negotiate contracts in their own name and on their own behalf and exercise their legal rights to inheritance.”
7	Beijing Declaration and Platform for Action 1995	September 1995	Article 165 calls on Governments to “undertake legislation and administrative reforms to give women equal rights to economic resources including access to, ownership of and control over land and other forms of property, credit, inheritance, natural resources and appropriate new technology.”
8	The Habitat Agenda: Istanbul Declaration on Human Settlements	June 1996	The States endorsed their commitments towards “ensuring adequate shelter for all and making human settlements safer, healthier and more liveable, equitable, sustainable and productive.” They further recognized “the particular needs of women, children and youth for safe, healthy and secure living conditions,” and promote “gender equality in policies, programmes and projects for shelter and sustainable human settlements development.”
9	Millennium Development Goals (MDGs)	September 2000	MDG Goal 3 mentions promoting gender equality and empowering women.
10	Convention 169 on Indigenous and Tribal Peoples adopted by International Labour Organization (ILO)	22 August 2007	The Convention requires State Parties to identify lands traditionally occupied by indigenous peoples and guarantee ownership and protection rights (Article 14). In essence, the “measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities” (Article 13). The Convention also requires the provision of legal procedures to resolve land claims (Article 14) establishes rights over natural resources (Article 15) protects against forced removal and establishes a right of return and compensation for lost land through either land (of at least equal quality and quantity) or money (Article 16).

S. No.	International Instruments	Ratification or Accession Date	Relevant description
11	United Nations Declaration on the Rights of Indigenous Peoples	13 September 2007 (voted for)	Article 26 of the Declaration provides that “indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.” The Declaration, while not binding, states that indigenous people have a right to own and develop resources on their land, a right to legal recognition of indigenous lands by states and a “right to redress . . . for the lands, territories and resources which they have traditionally owned or otherwise occupied or used and which have been confiscated, taken, occupied, used or damaged” (Article 26 and 28). The Declaration also provides that indigenous women shall be protected from discrimination and that particular attention shall be paid to their rights and special needs.
12	Convention on the Rights of Persons with Disabilities	27 December 2009	Article 12.5 of the Convention specifies that “State Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit and shall ensure that persons with disabilities are not arbitrarily deprived of their property.”
13	Voluntary Guidelines on the Responsible Governance Tenure of Land Fisheries and Forest	11 May 2012	The guideline directs States to “promote equal access to land ownership,” and further specifies that States should remove and prohibit all forms of discrimination related to tenure rights, including those resulting from change of marital status, lack of legal capacity and lack of access to economic resources.” In particular, States should “ensure equal tenure rights for women and men, including the right to inherit and bequeath these rights” (Article 4.6). Similarly, it directs States to “consider the particular obstacles faced by women and girls with regard to tenure and associated tenure rights and take measures to ensure that legal and policy frameworks provide adequate protection for women and that laws that recognize women’s tenure rights are implemented and enforced” (Article 5.4).
14	Sustainable Development Goals (Agenda 2030)	25 September 2015	Sustainable Development Goal 5: Achieving gender equality and empowering all women and girls.

Source: Compiled from different sources in 2015/2016.

2.2 NATIONAL LAND POLICIES, LEGISLATION AND WOMEN'S LAND ACCESS

After the downfall of the Rana regime in 1950, the first democratic Government started to implement various laws and policies regarding land access and ownership. Several political parties, mainly Nepali Congress and the Communist Party of Marxist and Leninist (CPN-ML), led the land rights movement with the slogan of “jasko jot usko pot” which translates to “land to the tillers.” The major laws included Birta Abolition Act 1959, Land Survey and Measurement Act 1963, Land Act 1964, Range Land Nationalization Act 1974, Guthi Sansthan Act 1976, Land Acquisition Act 1977 and Land Revenue Act 1977 (Adhikari, 2008). These Acts, however, did not address the lack of land ownership among women, landless or poor. The focus was instead on the improvement of agriculture through technology and encouraging the use of high yielding crop varieties.

This section provides a brief summary of the laws and policies that incorporates provisions related to women's access to and ownership of land and property.

i. *Muluki Ain (Civil Code)*

In Nepal, the *Muluki Ain* (Civil Code) governs inheritance laws, which is derived from the Hindu law. It was first adopted in 1854 and helped to preserve the sociocultural values as defined by the Hindu religion by legally validating the caste system and other customs, practices and beliefs that existed in Nepal in those times. The Code did not provide any kind of protection for women in relation to their property rights. For instance, No 2 of the Chapter on Father and Son states that all properties of the house shall only be divided to sons after the demise of the parents. In 1963, after the fall of the autocratic Rana regime, the *Muluki Ain* was completely revised. However, even the newly codified *Muluki Ain* remained discriminatory in relation to women's rights to land and property, depriving them of their right to inheritance.

In the year 1975, the Government of Nepal celebrated the International Year for Women and in the same year, the *Muluki Ain* was further amended and a clause on women's inheritance and property rights was included. The clause stated that if a woman remains unmarried up to 35 years of age, she would have a right to inherit property. However, the amendment was limited as it continued “if she gets married after getting a portion of the property, it should be returned back to the brothers after deducting the marriage cost.”

After the declaration of the 1990 Constitution of Nepal and the Government's ratification of CEDAW in 1991, the need to support women's rights to property was highlighted by different women's and human rights groups. In 1993, the Supreme Court of Nepal issued a directive to the Government to introduce a Bill in Parliament that would guarantee women's right to inherit property. Following the Supreme Court directive, the Ministry of Women, Children and Social Welfare (MoWCSW) drafted a Bill, popularly known as the “Women's Property Rights Bill” in order to amend the existing Civil Code, which was tabled for discussion in the 11th session of Parliament. However, it was not until 2001 that a parliamentary committee unanimously declared that women should have equal rights to inherit property. The Bill was eventually passed in the Parliament on 14 March 2002 and was sent to the King for his seal of approval and came into effect on 27 September 2002.

Some of the major achievements of the Eleventh Amendment of the *Muluki Ain* have been highlighted below;

- A daughter can enjoy the right to inherit her parent's property from birth.
- Previously, a wife had rights to her husband's property only if she was 35 years of age or the couple had been married for 15 years. This provision was amended and now a wife has equal rights to her husband's property immediately after marriage.

- A widow is fully entitled to inherit her husband's property. The amended Act ensures her right to claim her share of property from the joint family and use this property even if she re-marries. Previously, a widow lost her right to property from her husband or his family if she was found to be sexually disloyal to her deceased husband or if she remarried.
- A divorced woman can claim alimony as well as rights to share property. Previously, divorced women could not claim any right to their husband's property. They could only claim food for five years after the divorce. This national code was changed due to the pressure from women rights activists, advocates and the Supreme Court decision in 2002.

However, even after this Eleventh Amendment of *Muluki Ain*, discriminatory provisions still prevailed. For example:

- Daughters are provided a share in ancestral property, but after her marriage she needs to return the ancestral property to her parental family.
- A married daughter is the last in hierarchy for succession.
- Women do not have functional rights to dispose of her property without consent of her family members even if she is separated from the family. In the case of an unmarried daughter, she has to get permission from either her father or mother. In the case of a widow or divorcee, she needs to get consent from her adult son if she wants to dispose off more than half of the immovable property she received in partition (Oxfam, 2012).
- The law does not recognize a transaction carried out by a woman without her husband's consent where the husband's property is concerned (CSRC, 2013).

In 2007, the *Muluki Ain* was further amended in line with the Gender Equality Act 2006 (discussed below). As per the amendment, an unmarried daughter is now allowed an equal share of property and need not return the property after marriage. However, married daughters are still not considered as partakers during partition. Most recently, a new Civil Code Bill has been proposed which will replace the *Muluki Ain*. The new Bill proposes equal inheritance laws, whereby sons and daughters are entitled to equal shares in property division, regardless of their marital status. The bill is still under discussion in the Parliament.

ii. Land Reform Act 2021 BS (1964 AD)

The Land Reform Act 1964 mainly focused on land use, distribution and regulation. The main objective of this Act was to redistribute land to tenants and improve agricultural production through new technology and promoting high yielding crop varieties. The Land Reform Act did not address any issues regarding women's access to land but rather entrenched the existing gender discrimination. One such example of this is that the tenancy rights could be transferred only to the husband, wife and son, but not to the daughter. The daughter could not get any tenancy rights from the landlords even if she was unmarried until the fourth amendment of the Act in 1996.

Subsequent amendment of the act in 2002, as well as amendment in 2006 after the introduction of the Gender Equality Act 2006 recognized women's equal rights to inheritance. As per the amendment in 2006, the word "daughter" has been inserted after the word "son" appearing in sub-clause (2) under the definition of a "family." Similarly, the words "husband, wife, son, mother, father, adopted son, unmarried daughter having attained the age of 35 years, daughter-in-law, grandson, granddaughter-in-law or elder or younger brothers living in the same family" that appeared in subsection 1 of Section 26 on "Rights and Obligations of tenant"

have been substituted by the words “husband, wife, son, daughter, mother, father, adopted son, adopted daughter, daughter-in-law, grandson, granddaughter, granddaughter-in-law, elder or younger brothers or elder or younger sisters living in the same family.” Through the amendment, therefore, the Act secured equal tenancy rights for wives, mothers, daughters, granddaughters, daughters-in-law and sisters of the family in comparison with other male family members.

iii. Gender Equality Act 2006

The Gender Equality Act 2006 repealed and amended 56 discriminatory provisions and removed gender inequalities perpetuated by several previous acts and also incorporated provisions to ensure women’s rights. The Act amended a number of gender-discriminatory clauses of the *Muluki Ain*, including the provision that a daughter is required to return shared property upon marriage. Article 2(5) of the Act states: “an unmarried girl, a married woman, or a widow living separately may enjoy movable or immovable property on her own.” Similarly, it also amended the provision for summons issued by the court to be received by a male family member as far as possible and the provision for divorce in the case of not having children within 10 years of marriage. Furthermore, the Act establishes sexual violence as a crime punishable by varying years of imprisonment, depending on the age of the victim.

iv. The Citizenship Act 2006

Land ownership certificate and citizenship in Nepal are interconnected. In the past, it was not possible to obtain a citizenship without a land certificate. The Citizenship Act (2006) has included provisions to grant citizenship in the absence of land ownership certificates. However, for obtaining a land certificate, one has to submit his/her citizenship³ as a supporting document to the district land offices.

v. Financial Bill 2072 BS (2015/16 AD)

According to the Financial Bill 2072 BS, the following provisions are included to promote women’s ownership of land and property⁴:

- The Government is promoting joint registration of land rights in the names of husband and wife and co-ownership (joint) certificate can be obtained with a minimum registration fee of NPR 100 (less than USD 1). An individual ownership which was previously registered either in the name of wife or husband can also be transferred into joint ownership certificate with a fee of NPR 100.
- Senior citizens, both men and women above 70 years can register the land in their name and receive 25 per cent tax exemption in land registration.
- A single woman – more specifically – a woman with a deceased husband receives 35 per cent tax exemption in land registration.
- When transferring the land within three generations of daughter or granddaughter, 50 per cent tax is exempted in land registration.
- Dependent family member such as a husband, wife, son, daughter, father or mother of a martyr who lost his or her life during People’s Movement I, II and Madhes Movement need not to pay any tax for land registration.

³ The issue of citizenship remains one of the most contentious issues in the country. However, since it does not fall in the scope of this study, it has not been further elaborated.

⁴ The provisions included in the Financial Bill are subject to change each year with the release of new Bill.

- Disabled people, Dalits, or highly marginalized people receive 25 per cent tax exemption in land registration provided they have a supporting letter from a local Government such as a Village Development Committee (VDC) or Municipality or possess an official identity card.
- Landless, freed *Haliya* and freed *Kamaiya*⁵ need not to pay any tax, service fee, prevention or restriction (*Rokka* – the action of restricting from sell or transfer of property) fee while buying the land with a bank loan.
- Depending on the geographical region, women in Nepal receive 25 per cent to 50 per cent tax exemption in land registration. However, if a woman receiving this provision decides to sell her property within three years, she needs to pay back the full amount (including the tax that was exempted) to the Government of Nepal.

Despite these progressive provisions to promote women’s entitlement to land and property, there is lack of systematic and comprehensive outreach by the Government, which means that beneficiaries are not fully aware of the provisions included in the Financial Bill. It is, therefore, vital to design programmes to increase communities’ awareness in relation to women’s right to land and property and complement them with progressive provisions to bring a significant change with regards to equal access to land and tenure security for women in Nepal.

vi. Constitution of Nepal

The Constitution of 1950, 1963 and 1990 had no mention regarding women's land rights or inheritance property rights. Nepal's Interim Constitution 2007, Article 20 in relation to Rights of Women mentioned “Sons and daughters shall have the equal right to ancestral property.” In the Constitution of 2015, Article 18, under Right to Equality, states that “All children have equal rights to ancestral property without any discrimination based on gender.” Similarly Article 43 under Rights of Women states that, “Women shall have equal ancestral rights without any gender-based discrimination.” This is a big step forward in terms of women’s property rights in the country. It should however be noted that while the Constitution of Nepal has guaranteed equal property rights of women, it is not a panacea. A number of acts and policies will need to be drafted, or edited in the spirit of the Constitution and only through their effective formulation and implementation, the provisions of the Constitution can truly be attained.

2.3 AN OVERVIEW OF WOMEN’S LAND RIGHTS IN NEPAL

According to the Ministry of Agriculture and Development (MoAD), approximately 73 per cent of women in Nepal are engaged in agriculture compared to only 60 per cent of men (as of 2010). Female-headed households in the country have increased by about 11 per cent from 14.87 per cent in 2001 to 25.73 per cent in 2011 (Central Bureau of Statistics, 2011), which means that the involvement of women in agriculture is increasing. The land transfer patterns in the register, however, showed no increase in the proportion of properties registered by women between 1997 and 2000 (Wily, Chapagain and Sharma, 2009). According to the population census 2011, in 10.17 per cent of households, women have official ownership of both land and residential property, whereas in 9 per cent of households women have ownership only of land. In 79.48 per cent of households, women do not have any ownership of land and/or residential property.

⁵ A system of agricultural bonded labour prevalent largely in the Mid and Far Western Terai districts. As part of the practice, thousands of Nepalese people, particularly those belonging to Tharu community served their masters as bonded labourers in order to pay back the loans that their ancestors had taken many years ago. Moreover, they neither got remuneration for their work nor did they get time to work outside to earn and pay back the loan. The system was abolished in Nepal by an Act of the Parliament in 2000.

As of today, there is no such provision for equitable land distribution to women. After the restoration of democracy in 1990, the Government gave more priority to gender issues in every plan but in reality very few programmes were launched to improve women's access to and control over land.

- i. In the Ninth Plan (1998–2002), Women Development Programmes were implemented to increase their living standard by improving the socioeconomic status for deprived women. It also focused on increasing women's participation in income generation activities and a self-employment programme by providing institutional credit with a further emphasis on education, women's health, violence and employment.
- ii. The Tenth plan (2002–2007), under the Land Reform and Management programme, highlighted the need to support land utilization, land information systems, land management and increasing the productivity and rehabilitation for freed *Kamaiya* to uplift their livelihood. Besides this, the Government increased access to credit for deprived and marginalized people in society. Under the Women, Children and Social Welfare Sector programme, the Government focused on capacity development programmes like increasing women's access to resources and women's participation in all spheres, as well as abolition of all types of discrimination against women.
- iii. In the Three Year Interim Plan (2007–2010), the Government implemented various programmes under Empowerment of Women and Gender Equality, which was focused as a public awareness programme against domestic violence and human trafficking, women's skill development, income generation and women's participation in policy and decision-making process of all levels (with a target of 33% representation). Land Reform and Management focused on ending the feudal type of land ownership pattern and increasing land productivity and granting access of land rights to landless, tenants and freed *Kamaiya*.

As a result of the programmes and interventions as part of these periodic plans, status of women improved to some extent and some land reforms were initiated. For instance, up until 2001, women made up only about 6 per cent of the Lower House and 15 per cent of the Upper House (where some of the seats were nominated by the King). However, in the 2008 Constituent Assembly elections, women comprised 33 per cent seats in the CA, which was possible because of adoption of a mixed electoral system, including First-Past-The-Post and Proportional Representation, substantially increasing their numbers. Moreover, through the District Women and Children Offices (DWCOs), the Government is raising awareness programmes against domestic violence through social mobilizers, who are also helping to form women's saving and credit groups in various communities. Similarly, a number of land reforms were initiated, including the Land Reform Act, which aimed at addressing the issue of landlessness. While laudable, these interventions have not been entirely successful in eliminating all forms of discrimination against women, or to remove all kinds of inequities in land distribution.

As pointed out already, none of these programmes focused on women's land rights, or on land allocation for women below the poverty line. It was only in 2007–2010⁶ that the Government introduced targeted programmes to increase women's ownership of land, through providing 25–40 per cent tax exemption to women in land registration. It also promoted joint ownership of land certificates between husband and wife. As a probable result of this announcement, female landownership has increased significantly (from 11.7% in 2001 to 19.7% in 2011) (CBS, 2001; CBS, 2011). In Chitwan district alone, more than 51 per cent of land has been registered in the name of women in the year 2012 and 2013 (CSRC, 2015). According to a 2015 report of MoLRM, the highest tax exemption to women has been provided in Chitwan (USD 59,415⁷), followed by

⁶ National Planning Commission Eleventh Periodic Three Year Plan (2007–2010).

⁷ USD 1 is equivalent to NPR 107.



Bhaktapur (USD 51,720), Makwanpur (USD 22,285), Sankhu (USD 19,595) and Kailali (USD 10,139). Such initiatives have also contributed to women's empowerment by enhancing their negotiation and bargaining capacity, increasing their involvement in community level activities and by building up their confidence (CDS, 2013).

2.4 CUSTOMARY PRACTICES ON WOMEN'S RIGHTS TO ACCESS LAND

In most developing countries, both statutory and customary laws govern access to land. Customary laws emerge from unwritten social rules derived from shared community values and traditions. Customary laws limit women's rights to land to secondary rights mainly derived from their membership in patriarchal households (Almaz, 2007). The customary laws differ from one place to another and are governed by particular religions, cultures, social organizations of people and livelihood systems. Through this, society assigns the roles, rights and responsibilities to men and women.

The inheritance laws are primarily governed by the *Muluki Ain*, which is derived from Hindu laws and customary laws. The laws themselves are discriminatory against women's property rights due to a prevailing patriarchal societal structure and mindset. Under the Eleventh Amendment of the *Muluki Ain* 2002, daughters and sons have equal rights to inherit land, which radically challenged the cultural practices and social norms. However, even though formal laws mention that daughters and sons have equal rights to inherit land, when it comes to practice, these have not been followed. Cultural stigma promotes the belief that sons are considered as future caretakers of parents which acts as an obstacle for women to inherit land.

In Nepal, women's access to and control over resources is governed by different customary practices within different ethnic groups. One such example is seen in the fraternal polyandry (brothers marry the same woman) which is practiced among the people of Dolpo, Baragaun and Lo (Mustang) in Nepal (Bista, 2004). In this system, the inherited land is not divided among sons. Rather, they reside in a communal living arrangement and the woman moves to her brother's land. This practice prevents fragmentation of family land by attaching all males to the ancestral land and restricting the addition of non-family members (wives). Thus, women are deprived from ancestral land rights.

On the other hand, Bista (2004) outlines that in the Ranjbanishi ethnic group, daughters inherit family property after the death of their mother and the husband moves to his wife's mother's house after marriage. Therefore, Ranjbanishi women have more access to and control over all resources and their bargaining power is very high within the household. But this custom is no longer in practice due to influence by other customs. As a result, this ethnic group is changing towards a patrilineal society in which women's access to and control over inheritance of family property is limited (CSRC, 2013).

Some women from ethnic groups such as the Gurung, Sherpa and Thakali have more gender-sensitive land inheritance rights as compared to other castes like Brahmin, Chhetri and Dalit because these are matriarchal communities in which land and property is owned, managed, handled and controlled by women. Moreover, cross-cousin marriage is preferred among the Gurungs as it is believed that, through cross-cousin marriage, their property would not go to an outsider. Therefore, women's status is always strong in terms of control on both movable and immovable property (CSRC, 2013; Bista, 2004).

Despite the Government's many policies and laws, such as joint ownership and tax exemption for women during land registration, the customary practices, in most cases, act as a hindrance for women to access land due to caste, class, ethnic and geographical region and the widespread lack of enforcement of the decreed legislation. The different laws and policies that were formulated in the past did not address the issue of

customary rights and very limited programmes were implemented regarding women. In the case of indigenous people and Dalits, no particular laws or policies were formulated to address and enhance their rights and ownership of land. In Nepal, customary practices of different ethnicity or indigenous groups are not recognized or legitimized by law.

2.5 BARRIERS FOR WOMEN'S LAND RIGHTS

In case of general property rights, the Government of Nepal is developing progressive policies and programmes such as amendment of the *Muluki Ain*, formulation of the women's domestic violence policy, concession on land registration and increasing women's participation in the decision-making processes. However, while these are certainly progressive when it comes to establishing the property rights of daughters, all these policies and programmes do not specifically address women's land rights and tenure security. In addition to legal barriers, women also face barriers due to traditional patriarchal structures prevalent in Nepali society, lack of strong implementation and monitoring of the existing provisions, lack of gender sensitive services within the Government machineries and limited outreach by the Government in relation to existing provisions. Some of the major barriers that hinder women in accessing their rights to land and property have been highlighted below:

2.5.1 GAPS IN POLICY AND PRACTICE REGARDING WOMEN'S RIGHTS TO LAND IN NEPAL

As highlighted already, there have been positive policy interventions in relation to women's rights to land and property. However, the introduced laws and policies have several weaknesses. In addition, whatever laws and policies have been introduced, their implementation remains lax. Some of the major gaps in policy and practice regarding women's rights to land have been highlighted below:

- Even after the Eleventh and Twelfth amendments of *Muluki Ain* 2002, women are still discriminated on the basis of their marital status. The code provides that partition of property shall be done between the father, mother, husband, wife, son and daughter individually. All the coparceners shall receive equal share in the property in the course of making partition. This implies the equal inborn rights of son and daughter over ancestral property. However, married daughters are not entitled to the right of a share in property.
- The Eleventh amendment of *Muluki Ain* 2002 has given equal coparcenary rights to unmarried daughters. However, in reality even unmarried daughters cannot enjoy their equal rights over ancestral property as the law does not allow daughters to ask for partition on property with her parents, except in the case of forced partition.
- Although women have rights over their ancestral property either as a daughter or wife, in practice, they cannot compel their parents or husbands to give their share of property while their parents or husbands are alive. As long as the husband is alive and non-consensual, practice shows, the wife cannot get separated even after receiving her share in property. In practice, a daughter with the consent of her parents and a wife with the consent of her husband get their share of property.
- Traditional patriarchal practice in Nepalese society has further been incorporated within the legal framework. For example, a man can exercise his rights over half of the immovable property or all of the movable property at his own discretion even without the consent of his wife, son, unmarried daughters and widowed daughter-in-law.

- In practice, there is a need for documentary evidence for women to prove the origin of *daijo*⁸ and *pewa*⁹ to establish her ownership over the same property.
- Misuse of tax rebates by land mafias and real estate entrepreneurs has been observed and there is a lack of strong monitoring by the Government and CSOs. Recently, the Government has introduced a new rule to control misuse of tax exemption for women by land mafias stating that if a woman decides to sell the property within a three year period, she would need to pay back what she was offered as tax exemption.
- As noted earlier, a person needs to submit citizenship certificate to purchase land. A significant number of women, particularly from the southern belt of the country, have no legal documents such as citizenship certificate and marriage certificate with them. According to a study by Forum for Women, Law and Development (FWLD), approximately 4.6 million people are without citizenship certificates in Nepal.¹⁰ The report notes that nearly 87 per cent of eligible men have acquired citizenship certificates, compared to approximately 74 per cent of women. The report highlighted that women, particularly from the Madhesi and Muslim communities face cultural barriers in acquiring citizenship as they depend on male members to apply for citizenship certificate. Additionally, women conflict victims, women with deceased husbands and those involved in flesh trade have been unable to get citizenship certificates because their husbands had disappeared and their in-laws feared that they would claim property if their applications were successful. Some women reported that their own biological family members did not want them to have a legal claim to family property and inheritance and therefore refused to support their applications for citizenship certificates. The report also brought to attention that without citizenship certificates, women are unable to acquire kinship or marriage documents. These are legal documents which all Nepali citizens should have to own land in their name in Nepal. Lack of these legal documents prevents women from enjoying their rights to inheritance and property.
- The Government is not implementing a gender sensitive monitoring framework for land ownership including joint or individual ownership. It is a strong tool to provide land to the women in many Latin American or African countries.

2.5.2 TRADITIONAL NORMS AND PRACTICES

Patriarchal values and conservative social dynamics still influence the application of norms that are embedded in the Nepalese society. Males are usually the head of households and the decision makers. In most cases, women lack power and struggle for decision-making. As a result, their ownership, access and control over land and property are severely compromised. Some of the barriers that women face in terms of enjoying their rights to land and property owing to traditional norms and practice have been highlighted below:

- The daughter is considered as an heir only in the absence of a son in the family.
- In the case of unmarried daughters, families are apprehensive to make partition on property until and unless daughters get married. Since as part of traditional practice, daughters are married off and sent to their husbands' family and parents do not see the value in providing property to daughters.

⁸ *Daijo* refers to the movable and immovable property given to women by their parents and relatives.

⁹ *Pewa* refers to the movable and immovable property given by her husband and the coparceners of her husband.

¹⁰ <http://fwld.org/wp-content/uploads/2016/06/Acquisition-of-Citizenship-Certificate-in-Nepal-Estimation-and-Projection.pdf>

- Although the Government has provided tax exemptions for women in different geographic regions and there has been rise in women's land ownership as a result, the irony is that women do not necessarily have the control over land that has been purchased in their name. It is mostly the men of the household who just use the woman's name to avail the tax exemption, while continue to control the land.
- Due to the prevailing patriarchal norms, the legal document or proof of tenanted land is received by men (mostly the head of the family). As a result, even if there is consensus between husband and wife to take the joint certificate of tenanted land (50% share of the tilling land), women do not necessarily have control over that land.
- There are arguments among family members as to why women require property in their names when everyone is living together and when no family member has wanted to claim over ancestral property.

2.5.3 INEFFICIENCY AND APATHY OF THE GOVERNMENT SYSTEM

Although policies have already passed by the Government of Nepal, the promotion of women's land ownership issue still does not appear significantly in the Government's programmes and budget. It was only recently that the Eleventh Plan (2007–2010) of the Government of Nepal mentioned about tax exemption for women for promoting their ownership on land and property. At the same time, there is lack of gender sensitivity from the Government frontline officials and limited outreach of the existing provisions. Some of the major barriers that women face in relation to the Government system have been highlighted below:

- The MoLRM does not have any focused programme and budget for implementing and monitoring activities to improve the access to women's land rights.
- The MoLRM, District Development Committee (DDC), VDCs as well as the Municipality do not have record of accurate disaggregated data on women's land rights and do not have the practice of disseminating the progress on improvement of women's land ownership.
- There is a negligible number of female staff in land administration. So far, very few women have served as Chief Land Revenue Officer. Therefore, Government frontline officials, who are mostly men, are not officially trained on gender issues. Women community leaders interviewed during the study remarked that the officials' behaviour is often impervious towards women service seekers and devalues their concerns. Common comments of land officials include, "When your husband trusts you, why do you need a joint land certificate?", "Why are you spending money for this?" and "Who is giving you money for this?"
- It was also pointed out during interviews with women leaders that VDC Secretaries are not very friendly when providing the recommendation letter for joint land ownership; first, because they are not aware of the provisions on joint land ownership and second, even if they know, they consider it as an agenda of the advocacy groups rather than a provision set out by the Government.
- The Government of Nepal formed two High-Level Land Reform Commissions and a number of Landless Problem Solving Committees (also sometimes called Squatters' Problem Resolution Committee), but there is less than 20 per cent female participation (only one women member is in the working committee) and there is no mention about female participation in the ToR. The commissions have been appointed on an ad-hoc basis which is not recognizing women's participation in the process of formulating land policies and programmes.

- Due to the limited outreach by the Government of Nepal on the existing provisions to promote tenure security of women on land, there is a lack of clear information on procedures, programmes and supporting documents that need to be followed at the land offices. This results in hiring of scribes, who charge money for developing and preparing official documents. The scribes do not offer a standardized rate throughout the nation and service seekers suffer by paying random prices which varies in each district.
- So far, the Government of Nepal has not developed local women paralegals to facilitate women's access to land, whereas in many Latin American and African countries, the Government has been training local men as well as women paralegals to promote women's access and ownership of land.

PART III

INTERNATIONAL EXPERIENCES-BEST PRACTICES ON GENDER RESPONSIVE LAND TENURE SECURITY AND OWNERSHIP

3.1 REVIEW OF INTERNATIONAL LEGISLATIONS AND PRACTICES¹¹

In many countries around the world, policy efforts have been made to improve women's access to land and tenure security. The best practices of gender responsive legislation, programmes and land tenure security in 10 countries have been summarized below to highlight their relevance to the Nepali context.

3.1.1 Asia

Cambodia

Cambodia's Land Administration Law provisions a 30 per cent **female representation among the Cadastral Commission** which facilitates the promotion of gender responsive programming and monitoring. Recently, the Government is providing more **incentives such as daily allowances and transportation for women to register land in their name** (USAID, 2006). Nepal has also provided incentives to women to register land in their names through provision of tax exemption, as well as a minimal fee for joint land registration in the name of husband and wife. Despite this, it has been reported that it is challenging for women from rural areas to come to district headquarters to fulfil the formalities. If the Government can provide travel and a daily allowance to women during their travel, this would be an added incentive as well as a relief to many.

Philippines

The Administrative Regulation Act 1998 of Agrarian Law of the Philippines mentions that if two people are living together, regardless of whether they are married or not, it is mandatory to own the land jointly **and that written consent of both partners is required for any kind of land transaction** (USAID, 2006). The Agrarian Law also states that Government programmes should be gender sensitive – including designing gender sensitive indicators and that local Government or provincial Government should be responsible for gender responsive customer service. It also requires **conducting baseline surveys of women's land rights and tenure security**. In Nepal, such baseline surveys are missing, which leaves a vacuum when designing plans and policies. If each district can conduct such baseline surveys, it will serve as a guideline to develop action plans on designing and implementing gender responsible programmes on land security based on the status of a particular district.

Sri Lanka

The 2008 Housing Regulation of Sri Lanka provided that the Housing Authority in charge of providing loans would give preference to **joint loan applications from spouses, widows, divorced or separated women** (OHCHR and UN Women, 2013). Similarly, the North East Housing Reconstruction Programme gave financial aid to reconstruct houses damaged by the war. The application form for financial aid needed to be signed by both spouses and the money was deposited into a joint account maintained by both the husband and the wife. Priority was also given to female heads of households in the application process (OHCHR and UN Women, 2013).

¹¹ These examples have been derived from studies and documents available online. It is not to say that the countries included are perfect in relation to women's land rights. Additionally, the effectiveness and success of these policies and programmes have not been studied.

Nepal too has passed through a decade-long armed conflict and most recently an earthquake that rattled the country in 2015. With reconstruction process picking pace, Nepal could draw lessons from Sri Lanka in ensuring that the grants and loans provided for housing reconstruction are given jointly to spouses.

Timor-Leste

The Timor-Leste's Land Law 2013 provisions free registration of land for women. If the landholding household has no legal documents, local testimony is enough to prove women's land ownership. The Government has also trained **local paralegals to facilitate women's access to land or land registration of women- including joint ownership**. Additionally, one of the many services provided by the Court of Timor-Leste is **free legal aid to women**, with a specific focus on the poor (CEPAD, 2014). Timor-Leste has a provision called "prenuptial agreement" which requires the disclosure of property before marriage. In the case of divorce, the property should be equally divided legally between the wife and the husband. Any decision related to property should be in agreement between the wife and husband (CEPAD, 2014). One important intervention that Nepal can learn from Timor-Leste is making provisions for local paralegals (called Scribes in Nepal) as well as providing free legal aid to women so that they are not under financial pressure to meet the high fees charged by paralegals and other service providers.

3.1.2 Latin America

Nicaragua

The Agrarian Law 278 provisions the formation of a **committee on the monitoring of women's land rights or joint land ownership between husband and wife** (USAID, 2006). In 2014, Nicaragua made arrangements for a **separate bank for women to buy land with 0 per cent interest rate**. Women have 30 years to pay back the loan they take from the bank, or earlier if they wish or have the means to do so. This could be a promising initiative for Nepal too as many women are not in the position to pay back the high interest charged on loans, both formal and informal, sometimes as high as 40 per cent. Additionally, the monitoring mechanism could be strengthened through the appointment of a committee similar to that in Nicaragua.

Peru

The 1987 Law of Peasant Communities of Peru provisions for **rights of women in common property – especially public land, communal land, communal forest and public rivers**. The law first requires membership of community for private and public services, and ownership of land. Without the membership, land rights are not granted. Due to the high membership of women in the community, more than 30 per cent of women now represent the local authority or municipal authority. The Government provides **production and marketing funds to women and supports women-led business in both rural and urban areas**. A lesson from Peru is that women's involvement in economic and business activities results in active participation of women in different government or non-government activities and committees (USAID, 2006).

Plurinational State of Bolivia

The Bolivian Family Code 1979 protects joint property of both husband and wife – or any property acquired during marriage by the couple and mentions that **both husband and wife have equal rights whether it is state provided property or property acquired from investment** (USAID, 2006). In addition, the Government appoints and trains paralegals where a 50 per cent representation of women is compulsory. Additionally, it is mandatory for the Government to produce and publish **gender-disaggregated data in relation to women's access to land**. Moreover, a gender-responsive monitoring framework is used to ensure that provisions for women's access to land are adequately implemented. While an important achievement for Nepal in the 2011 National Census

was that, for the first time, it provided data on status of women's land ownership. The data was, however, not comprehensive. Like Plurinational State of Bolivia, Nepal could also annually disclose the progress on women's land and tenure security publicly, which can further contribute to plans on land and tenure security of women. In Nepal, there is no provision for appointing and training women scribes (equivalent to that of paralegals) to support the women service seekers at the land offices. Introducing this provision could be an important intervention as they can facilitate women's access to land and provide support in filling out applications and guiding them throughout the registration procedure.

3.1.3 Africa

Ethiopia

The Family Code of Ethiopia recognizes two types of properties; personal and common. The personal property is the one which a spouse owns on the day of marriage. Upon divorce, the common property is divided equally between husband and wife (USAID, 2006). According to Federal Law 1997, women are allowed to hire workers, cultivate their holdings and secure their rights. The law provides a system of allocating land to women and transparency on land titling for user rights. The law also requires the Federal Government to **ensure women's participation in land governance** and to secure their user rights (USAID, 2006). Similarly, **to measure and survey the land for new registration, the Government formed a local committee, where it is mandatory that at least one-third of members are women.** Women still are in small numbers in such committees in Nepal and an increased representation of women in the Land Survey and Registration Committee can help more women become aware of their rights on land and property.

Uganda

The Government of Uganda formed a Committee on National Land Policy with diverse participation of CSOs – Government officials and women land rights activists – which led to ensuring women's land rights in the National Land Policy 2011 (OHCHR and UN Women, 2013). The policy **ensures land rights of widows, HIV affected women, pastoralist women and indigenous women** (OHCHR and UN Women, 2013). The Uganda National Land Policy ensures that at least 30 per cent of agricultural land should be controlled or transferred to women's use or ownership. The Global Land Tool Network (GLTN) together with the Government of Uganda has been implementing **Gender Evaluation Criteria (GEC)** in the districts to ensure the developed land tools are gender responsive (GLTN, 2014). In Nepal, NGOs and UN agencies are piloting GLTN and land tools such as GEC and **Social Tenure Domain Model (STDM)** to assess and ensure the developed policies are pro poor and gender responsive. The agencies are also liaising with the GLTN headquarters for the country level engagement, which could be a fruitful initiative in terms of ensuring that the land policies are pro poor and gender responsive.

Zambia

Zambia's National Land and Administration Policy requires the governmental institutions to ensure that at least 30 per cent of land ownership is in the name of women. The Government of Zambia also developed procedures to provide information regarding women's access to land, build the capacity of rural women and develop leadership of women to ensure their land rights (OHCHR and UN Women, 2013). **Zambia has also established a special victim support unit within its police force to protect women from property grabbing after the death of a spouse** (OHCHR and UN Women, 2013). In certain districts of Nepal, a number of CSO are trying to strengthen the negotiation, advocacy and leadership skills of female community members, particularly in relation to land issues. Such initiatives should be expanded so that more women become aware of their rights and are capable to fight for them.

In addition to the aforementioned programmes, policies and interventions, there are other international best practices that Nepal can learn from. Brazil, Colombia, Costa Rica, Honduras and Nicaragua have passed agrarian legislation which decrees **joint adjudication and titling of land to a couple**. In 2001, Viet Nam revised its Marriage and Family Law, making way for **joint use rights of husband and wife**. India also started a joint land ownership Pattas (certificate) recently (OHCHR and UN Women, 2013). Moreover, the Single Women's Rights Forum advocated for women's land rights in India, Bangladesh and the Philippines, showing that when women organize and voice their opinions, women friendly land policies and practices can be formulated and also implemented (OHCHR and UN Women, 2013).

In all of the surveyed countries, the Constitution recognizes equal property and land rights of women and men. This is further supported through Land Reform Acts, Family Property Laws and/or Civil Codes and dedicated institutions such as committees like National Land Policies, Village Land Committees, Land Survey Committees and Land Administrative Committees. More progress on women's access to land is seen where there is a strong development of a monitoring system, a **gender sensitive framework and proactive participation of women in policy formulation and implementation**. Some African countries like Zambia, Uganda and Namibia used quotas to ensure that a certain percentage of agriculture land is controlled by women and that a certain percentage of the female population holds the land. While affirmative actions have been taken in Nepal, a lot still needs to be done to ensure that women are able to exercise their rights to land and property freely and fully.

PART IV

CONCLUSION AND RECOMMENDATIONS

4.1 CONCLUSION

The Eleventh Amendment of the *Muluki Ain*, the Interim Constitution of Nepal 2007 and most recent the Constitution of 2015, have provisions ensuring women's equal access to land and property. However, due to prevailing traditional practices and a patriarchal mindset, women continue to be marginalized in terms of land ownership. Despite the fact that women marched shoulder to shoulder with men during the movements of the 1950s, 1990s and 2005/2006, the Land Reform Programme introduced in 1964 and the ensuing Land Reform Act was not in favour of women – landless or poor. Focus was rather directed towards the improvement of agriculture through technology and high yielding varieties. The land laws should be inclusive and distribute equal land ownership among men and women in order to increase agriculture production. However, Nepali land legislation continues to ignore gender issues.

Nepal has signed a number of international treaties and conventions ensuring women's rights to land and property and has formulated a few progressive policies and programmes on women's property rights. However, it has not adequately focused its policies and programmes on ensuring women's land rights in the country. The Government of Nepal does not have accurate data on women's land rights. There is no programme for women's land rights at a local or district level. No budget has been established for securing land rights of women. There is also a lack of a strong joint monitoring mechanism from the Government and CSOs on women's property rights and land tenure security. The status of policies and legislations seem progressive but has not been fully accepted and implemented in society. As a result, more than 80 per cent of women are deprived of land ownership or land property and are facing insecurity and structural violence in day-to-day life.

What Nepal needs is proactive participation of women in the process of formulating policies and programmes that would enable them to claim land resources and secure their rights. Although policies and programmes are being developed to enhance women's land and property rights, a traditional and patriarchal mindset still exists which is hindering effective implementation of the new policies and practices. Therefore, it is important to continue to raise awareness on the importance of ensuring women's rights to land and property and train women so as to build their capacities to fight for their rights and tenure security.

4.2 RECOMMENDATIONS

Based on the review of national legislation, policies, practices and international best practices, the following policies and practices are recommended.

Policy level recommendations

- i. Women's land rights should be recognized as human rights issue by the Government, international community and others concerned.
- ii. Proactive participation of women in policy formulation and implementation should be ensured.
- iii. Joint land occupancy rights of men and women over each farming plot, if being managed by a family, should be strongly considered.
- iv. Independent land rights of women should be guaranteed – especially for single women, including unmarried daughters, divorcees and widows managing the field.

- v. Implementation of the *Muluki Ain* – especially the provision of women's property rights – as well as laws and bylaws at grassroots level should be enforced.
- vi. The Constitution of Nepal which was promulgated in September 2015 guarantees women's equal rights to land and property. However, it is equally important to draft relevant laws and policies reflecting the constitutional provisions and ensure their effective implementation to truly ensure gender equality in practice.

Administrative recommendations

- i. There is a need for gender-sensitive land tenure context mapping at all levels, from VDCs or municipalities and from district to national level.
- ii. VDCs and DDCs should allocate budget for women's land rights and specific programmes on women's tenure security on land.
- iii. Produce and publish gender-disaggregated data in relation to women's access to land.
- iv. Consider the establishment of a separate bank for women to buy land with a 0 per cent interest rate.
- v. A baseline survey of women's land rights in Nepal to effectively develop policy targets and measure progress, new survey and provision of joint or individual land ownership of women.
- vi. Compulsory provision for women's land rights and joint title in the names of spouses while the Government distributes land.
- vii. GEC should be applied while designing policies, programmes and other tools to ensure gender responsive land administration, management and governance.
- viii. Make written consent of both partners a requirement for any kind of land transaction.

Capacity-building and outreach related recommendations

- i. Training especially focused on women's land rights should be provided to concerned officials including VDC Secretaries, district level Government officials and local land administration and management personnel.
- ii. Free legal aid for women should be made available to facilitate women's access to land or land registration of women – including joint ownership.
- iii. The Government needs to develop and implement a comprehensive and systematic outreach strategy to sensitize communities regarding women's land rights and enhance awareness ensuring women's access to these legislative provisions for promoting tenure security on land.
- iv. CSOs and civil society need to work collectively to change the feudal and patriarchal mindset in the society.

Community level recommendations

- i. In the case of managing communal and other public land, a management committee should be formed bringing in the concerned community people, which must include no less than 50 per cent women.
- ii. Women's groups at the community level should be provided with collective rights for managing previously unused or fallow lands.

REFERENCES

Adhikari, J.

2008 *Land Reform in Nepal: Problems and Prospects*, NIDS and Action Aid, Kathmandu.

Agrawal, B.

2013 *Why Property Rights for Women Matter*, One World South Asia, available at: <http://southasia.oneworld.net/features/india-why-property-rights-for-women-matter#>, last accessed on 6 November 2015.

Almaz, W.

2007 *Women's access to and control over land in the current land administration system in two rural Kebeles in Ada'a Woreda of Orima Region*, MSc Thesis (Gender Studies), Addis Ababa University, Addis Ababa, available at: http://cgspace.cgiar.org/bitstream/handle/10568/618/Thesis_AlmazWomen.pdf?sequence=1&isAllowed=y, last accessed on 1 June 2016.

Bista, D.

2004 *People of Nepal*, Ratna Pustak Bhandar, Kathmandu.

Caplan, L.

2000 *Land and Social Change in East Nepal: A Study of Hindu Indigenous Relations*, Himal Books, Kathmandu.

Central Bureau of Statistics

2011 *National Population Housing Census 2011 (National Report)*, CBS, Kathmandu.

Center of Studies for Peace and Development

2014 *Women's Access to Land and Property Rights in the Plural Justice System of Timor-Leste*, UN Women, available at: http://asiapacific.unwomen.org/~media/field%20office%20eseasia/%20docs/publications/2015/01/cepad%20a2j%20research%20report_english_to%20print.pdf, last accessed on 1 June 2016.

College of Development Studies

2013 *Impact of Joint Land Ownership and Land Entitlement to Women in Nepal*, Preliminary findings, available at: www.ilcasia.files.wordpress.com/2014/02/impact-study-of-jlo-and-wle-cds-2.pdf, last accessed on 10 May 2016.

Community Self Reliance Centre

2013 *Summary Report-Second National Conference of Women Farmers*, 3-5 March, 2013.
Women's Access to Land Booklet, CSRC (Forthcoming).

Deuja, J. and P. Subedi

2014 *Access to and control over resources*, ActionAid Nepal and Stri Shakti, Kathmandu.

Dhaatri Resource Centre for Women and Children- Samata

2010 *An Advocacy Guide to Understanding Women's Access to Land Rights in South Asia*, available at: www.dhaatri.org/dhaatri/publications/Advocacy%20Guide%20to%20Understanding%20Land%20Rights%20of%20Women%20in%20South%20Asia.pdf, last accessed on 1 March 2016.

Food and Agriculture Organization

- 2012 *The State of Food Insecurity in the World*, FAO, Rome, available at: www.fao.org/docrep/016/i3027e/i3027e00.htm, last accessed on 5 November 2015.

Global Land Tenure Network

- 2014 Introduction to Global Land Tenure Network, available at: www.gltcn.net/index.php/country-work/uganda, last accessed on 5 March 2016.

Gomez, M. and D.H. Tran

- 2012 *Women's Land Property Rights and the Post 2015 Development Agenda*, available at: www.worldwewant2030.org/node/283484, last accessed on 25 July 2016.

Government of Nepal

- 1963 *Muluki Ain, 2020 BS (Civil Code)*, Government of Nepal, Kathmandu.
- 2002 *Eleventh Amendment of Muluki Ain (Civil Code)*, Nepal Kanun Kitab, Government of Nepal, Kathmandu.
- 2006 *Act to Amend Some Nepal Acts for Maintaining Gender Equality, 2063*, Government of Nepal, Kathmandu.
- 2015 *Constitution of Nepal (2072)*, Government of Nepal, Kathmandu.

Government of Timor-Leste

- 2013 *Special Regime for Determination of Ownership of Immovable Property* was passed by the Council of Ministers on July 9, 2013 but is yet to be debated or approved by the National Parliament.

Karki, S. and J. Basnet

- 2012 Women Land Rights and Inheritance: Country Position Paper (Unpublished).

Malla, P.S.

- 2001 Property Rights of Nepalese women, Nepal Democracy, available at: www.nepaldemocracy.org/gender/property_rights.htm, last accessed on 25 February 2016.

Ministry of Finance

- 2015 *Financial Bill 2015/16 (Arthik Bill 2072)*, Ministry of Finance, Government of Nepal, Kathmandu.

Nabacwa, M.S.

- 2001 *Policies and Practices towards Women's Empowerment: Policy Advocacy by Gender Focused NGOs and the Realities of Grassroots Women in Uganda (Draft)*, Action Aid, available at: www.actionaid.org.uk/sites/default/files/doc_lib/123_1_reality_grassroot_uganda.pdf, last accessed on 2 June 2016.

OHCHR and UN Women

- 2013 *Realizing Women Rights to Land and Other Productive Resources*, OHCHR and UN Women, New York and Geneva, available at: www.ohchr.org/documents/publications/realizingwomensrightstoland.pdf, last accessed on 2 June 2016.

Oxfam

- 2012 Status of Women's Land Rights in Nepal, Briefing Paper and Study carried out by Landesa, India, unpublished paper.

United Nations

- 1995 Fourth World Conference on Women Beijing Declaration, available at: www.un.org/womenwatch/daw/beijing/platform/declar.htm, last accessed on 12 February 2016.

United States Agency for International Development

- 2006 Study on Women and Property Rights: Project Best Practices, USAID, available at: www.usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_Study_on_Women_and_Property_Rights_Best_Practices.pdf, last accessed on 2 June 2016.

Wily, L.A., D. Chapagain and S. Sharma.

- 2009 Land Reforms in Nepal: Where is it coming from and where is it going, DFID Nepal, Kathmandu, available at: www.landcoalition.org/sites/default/files/documents/resources/nepal_law_book.pdf, last accessed on 2 June 2016.

World Bank

- 2005 Gender Issues and Best Practices in Land Administration Projects: A Synthesis Report, available at: http://siteresources.worldbank.org/INTARD/Resources/Gender_land_fulltxt.pdf, last accessed on 8 November 2015.

Various International treaties, Instruments and Conventions.

ANNEX A

NAME LIST OF FOCUS GROUP DISCUSSIONS AND INTERVIEWS

Chiang Mai Thailand (6–8 October 2015 - Plenary and Individual Interview – ILC Regional Workshop)

1. Mr Don Marquez / ANGOC, Philippines
2. Ms Marie Joy Q. Demaluan / CARRD, Philippines
3. Ms Ratnasari / RMI, Indonesia
4. Mr Pallab Chakma / KF, Bangladesh
5. Mr Fernando Bagyan / AIPP, Philippines
6. Ms Shanjida Khan Ripa / ALRD, Bangladesh

Jakarta, Indonesia, 14–18 December 2015 (PEKKA, Scoping Study on Women Headed Households) - Focus Group Discussion and Informal Interview

1. Ms Nani Zulmari, Executive Director of PEKKA, Indonesia, Jakarta
2. Ms Fitria Villa Sahara, Programme Operation Manager, PEKKA
3. Ms Eileen Alma, Team Leader Women Leadership, COADY International Institute
4. Dr Valerie Miller, Women Activist and researcher, USA
5. Ms Sitti Zamraini Alauthi, Field Facilitator, PEKKA, Indonesia
6. Ms Riadul Wardiyal, Field Facilitator, PEKKA, Indonesia

15 December 2015, Location: Village Office, Discussion with Village Leaders

1. I Wayan Putu Oca - Village Secretary
2. Hazi Sobirin, Non - formal leader
3. Nuriah - Head of hamlet
4. Mulyadi - Head of hamlet
5. Mardrawasin - Assist of village head

CSRC and NLR Policy level Discussion (Plenary and individual interview, October and November 2015)

1. Ms Nahendra Khadka
2. Ms Sudha Khadka
3. Mr Uddhav Adhikari
4. Mr Jhalak Subedi
5. Ms Yamuna Ghale
6. Mr Prakash Kaphle
7. Mr Lyam Bahadur Darji
8. Mr Som Prasad Bhanadri
9. Mr Jagat Deuja
10. Ms Kalpana Karki
11. Mr Shyam Bk

Policy level (Parliament and political leaders - Plenary discussion and informal discussion)

1. Mr Kashi Nath Adhikari
2. Mr Hari Rokka
3. Mr Bhanu Sigdel
4. Mr Balram Baskot
5. Mr Sitaram Tamang

Government Officials (Informal Discussion and Interview, October and November 2016)

1. Mr Krishna Raj BC, Joint Secretary, Survey Department, Ministry of Land Reform and Management
2. Mr Gopal Giri, Under Secretary Ministry of Land Reform and Management
3. Mr Janak Kumar Joshi, Under Secretary, Ministry of Land Reform and Management



International Organization for Migration

INTERNATIONAL ORGANIZATION FOR MIGRATION

768/12 Thirbam Sadak, Baluwatar - 5

P.O.Box: 25503, Kathmandu, Nepal

Tel.: +977-4426250, Fax: +977-1-4435223

E-mail: iomnepal@iom.int / URL: <http://nepal.iom.int>