Housing, Land and Property Mapping Project

Nepal

**Background**

The following fact sheet and research memo have been developed to provide quick and key information of the legal and procedural context relating to Housing, Land and Property (HLP) within the target country. They are intended to inform programming and emergency responses, especially those involving shelter interventions. A rapid understanding of the tenure landscape in each country context can assist in delivering stronger and more equitable responses, however these documents are not intended to be legal advice.

The HLP mapping project has been undertaken by Allens lawyers, using templates developed by the Australian Red Cross (ARC) and the International Federation of the Red Cross and Red Crescent Societies (IFRC). All of the research has gone through a verification process with in country lawyers and/or country experts.

**Document Change Management**

These documents are intended to be used and updated as necessary to ensure that they are always providing the most current and relevant information. We would appreciate ongoing feedback and updates from those working in country, in response or preparedness.

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|  |  |  |  |
| --- | --- | --- | --- |
| **Title** | Nepal HLP Profile | | |
| **Description** | Fact Sheet and Research Memo | | |
| **Created By** | Allens Lawyers, Australian Red Cross, IFRC | | |
| **Date Created** | July 2019 | | |
| **Maintained by** | Leeanne Marshall [lemarshall@redcross.org.au](mailto:lemarshall@redcross.org.au) | | |
| **Date** | **Submitted by**  (name, organisation, email) | **Suggested amendments**  (please indicate section, paragraph, page as needed) | **Status** |
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Housing, Land and Property Law in Nepal

**1 Key laws and actors**

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| [Laws](#sec_2_1_a) | The main laws governing housing, land and property are the [*Constitution of Nepal* (2015)](https://www.constituteproject.org/constitution/Nepal_2015.pdf), the [*Land (Survey and Measurement) Act, 2019* (1963)](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC107985),the [*Lands Act, 2021* (1964)](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC006239), the [*Land Acquisition Act, 2034* (1977)](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC006227), the [*Land Revenue Act, 2034* (1978)](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC107986), and the *Local Government Operation Act, 2074* (2017). |
| [Key government actors](#Key_Govt_Actors) | The Ministry for Land Management, Cooperatives and Poverty Alleviation is the national governmental body responsible for land management and administration. The Ministry of Agriculture and Livestock Development is the national governmental body responsible for the development and growth of the agricultural sector. In addition, the maintenance of land records and the protection of public land is a function carried out at the local government level by Rural Municipality and Municipality.  There are also a number of non-governmental bodies that campaign on policy issues related to land rights, including the National Land Rights Forum, Lumanti, and the Forum for Women, Law and Development. |

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| **2** [**Common types of tenure**](#Common_types_of_tenure)  Land registration is compulsory in Nepal, giving rise to the relevant land rights, and the land register must be updated upon transfer of land. In practice, a considerable amount of land in Nepal remains unregistered, and it can be difficult to precisely discern boundaries between different parcels of land because of weaknesses in cadastral mapping. The table below summarises the three types of tenure in Nepal. | | | |
| **Tenure** | **Commonly Registered?** | **Key Features** | **Title document** |
| [Ownership](#Ownership) | Yes | Private land can be owned by Nepalese citizens. It can be acquired by purchase, inheritance, or allocation by Government. A substantial amount of privately owned land is leased to tenants under tenancy arrangements with varying degrees of formality and security. | Registration certificate |
| [State land](#State_Land) | Yes | State land is comprised of public land (which is land used by the general public) and government land (which is land used by the Government of Nepal). | Registration certificate |
| [Guthi land](#Guthi_Land) | Yes | Guthi land is the land belonging to religious bodies in Nepal. It includes temples, monasteries, religious schools and hospitals. Only a very small amount of land in Nepal is Guthi land. | Registration certificate |

**3** [**Security of tenure of vulnerable groups**](#Security_of_tenure_of_vulnerable_group)

|  |  |
| --- | --- |
| [Women](#Women) | Women and men have equal legal rights to access and own land. However, far fewer eligible women than men in Nepal have a citizenship certificate, which means women have a limited practical ability to formalise any property interests they might have. |
| [Minority groups](#Minority_groups) | Members of minority groups who do not have Nepalese citizenship are unable to acquire formal property interests. Informal tenancy arrangements available to minority groups lack the security of formal registered land ownership. |
| [Informal settlements](#Informal_settle) | Informal settlements exist on riversides, roadsides and in open public spaces in Nepal's cities. Those living in informal settlements generally do not have land title documentation, and so do not have secure tenure. Two informal settlement federations have been recognised in Nepal: Nepal Basobas Basti Samrakchan Smaj and Nepal Mahila Ekta Smaj. |
| [Landless people](#Landless_people) | The Constitution provides all citizens with a right to housing, and identifies the need to rehabilitate landless people and squatters by offering housing, housing lots, and cultivable land. Nepal law also recognises the possibility of land ownership based on adverse (or 'long past') possession. In practice, these laws and policies are not enforced, and land rights for landless people and squatters are not recognised. |

**4** [**Eviction, expropriation and relocation**](#Eviction_Expropriation_Relocation)

|  |  |
| --- | --- |
| [Eviction](#Eviction) | The Constitution provides that no citizen shall be evicted from their residence. In practice though, people with informal tenure are not protected from eviction. |
| [Expropriation](#Expropriation) | The Government is constitutionally authorised to acquire land if in the public interest. Expropriation of this kind must follow a prescribed procedure, which can take several weeks to complete. The procedure allows the existing landowner(s) to make a complaint in relation to the proposed expropriation, and for such a complaint to be determined. The Government's right to expropriate land is subject to the requirement to compensate the landowner(s). |
| [Relocation](#Relocation) | There are no generally applicable laws in relation to relocation but the Government has introduced legislation dealing with relocation requirements in the context of specific disasters. The regime governing compensation for landowners following expropriation also includes compensation for relocation costs. |

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| **Disaster Law Housing, Land and**  **Property Mapping Project**  Nepal |
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**Acknowledgements**

In preparing this memorandum, Allens has received extensive assistance from Tilak Pandey and Sabana Poudel of Pioneer Law Associates in Nepal. Allens is grateful to Tilak and Sabana for their generous and invaluable contribution to this research.

**Disclaimer**

This report is the result of a desktop review of publicly available information. This report is not legal advice.

1. Introduction
   1. Overview

The Red Cross Red Crescent aims to respond to disasters as rapidly and effectively as possible, by mobilising its resources (people, money and other assets) and using its network in a coordinated manner so that the initial effects are countered and the needs of the affected communities are met.

The Australian Red Cross (***ARC***) is a key Partner National Society, supporting the International Federation of Red Cross and Red Crescent Societies' (***IFRC***) response to natural disasters in the Asia-Pacific.

The Red Cross Red Crescent has identified that better knowledge of local housing, land and property laws in the Asia-Pacific is vital to ensuring that emergency shelter is delivered efficiently and equitably in the aftermath of natural disasters.

Australian Red Cross, with technical support and initial research from IFRC, has provided the research template to which this memorandum responds. This memorandum comprises three main sections.

* The first section, entitled ['common types of tenure'](#Common_types_of_tenure), provides an overview of the different types of housing and land tenure in Nepal. It outlines the methods used to create and transfer tenure, and analyses the degree of security of tenure afforded by each form of tenure.
* The second section, entitled ['security of tenure of vulnerable groups'](#Security_of_tenure_of_vulnerable_group), considers whether, and to what extent, certain groups face legal barriers to owning or accessing land and housing.
* The third section, entitled ['eviction, expropriation and relocation'](#Eviction_Expropriation_Relocation), considers Nepalese statutory and case law which governs, or is applicable to, forced evictions, compulsory acquisition of land and relocations. This section also considers whether compensation is available in these situations.
  1. Background information on Nepal

Nepal is a landlocked country in South Asia with an estimated population of approximately 29.3 million people.[[1]](#footnote-1) After hundreds of years as an independent monarchy, and following the Nepalese civil war in the 1990s and early 2000s, Nepal became a republic in 2008 with the election of its first Constituent Assembly.[[2]](#footnote-2)

The Interim Constitution of Nepal was drafted in 2007, which sets out provisions on citizenship, fundamental rights, responsibilities, and government.[[3]](#footnote-3) It was replaced with the *Constitution of Nepal* (2015) (the ***Constitution***).[[4]](#footnote-4) The Constitution provides for three levels of government: federal, provincial and local.[[5]](#footnote-5) Nepal has seven provinces, with each province divided further into districts (there are 77 districts in total).[[6]](#footnote-6) Below the local level of government, Nepal also has Village Councils, Municipal Councils and District Assemblies.[[7]](#footnote-7) State power is explicitly vested in each of the federation, provinces and districts in accordance with the Constitution,[[8]](#footnote-8) with all residual power being vested in the federation.[[9]](#footnote-9)

Citizens of Nepal are known as Nepali or Nepalese. Nepal's population includes members of approximately 125 caste and ethnic groups.[[10]](#footnote-10) The national language is Nepali (spoken by about 47% of the population), though around 123 languages or dialects are spoken, including Maithili (12%), Bjojpuri (6%), Tharu (6%), Tamang (5%), Newari (3%), Magar (3%) and Bajjika (3%).[[11]](#footnote-11)

The primary driver of Nepal's economy is agriculture, which accounts for about 31.8% of the country's GDP, and about 72.6% of the country's employment.[[12]](#footnote-12) The current system of land tenure in Nepal (outlined in this report) is relatively new, and replaced a far more complex, feudal system of tenure. Under the previous system, the Crown was supreme owner of all land, and intermediary owners of land were determined by diverse customary systems of tenure.[[13]](#footnote-13) Customary land tenure has been gradually abolished.[[14]](#footnote-14) Nonetheless, for the reasons discussed herein, land rights in Nepal remains a difficult and sensitive political issue for the country.



Figure 1 - Map of Nepal (Credit: OCHA)

1. Common types of tenure
   1. Tenure typologies
      1. **What are the key pieces of legislation governing housing, land, building and planning? Please provide links to copies of the legislation.**

The key pieces of legislation (as amended from time to time) are:

* + - the [Constitution](https://www.constituteproject.org/constitution/Nepal_2015.pdf);

* + - *[Land (Survey and Measurement) Act, 2019](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC107985)* [(1963)](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC107985)(the ***Land Survey Act***);[[15]](#footnote-15)

* + - *[Lands Act, 2021](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC006239)* [(1964)](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC006239)(the ***Lands Act***);[[16]](#footnote-16)

* + - *[Land Acquisition Act, 2034](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC006227)* [(1977)](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC006227) (the ***Land Acquisition Act***);[[17]](#footnote-17)

* + - *[Land Revenue Act, 2034](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC107986)* [(1978)](http://www.fao.org/faolex/results/details/en/c/LEX-FAOC107986) (the ***Land Revenue Act***);[[18]](#footnote-18) and
* *Local Government Operation Act, 2074* (2017)(the ***Local Government Act***).[[19]](#footnote-19)
  + 1. **What types of tenure exist?**

The following types of tenure exist in Nepal:

* + - 1. Private land ownership
         1. What is it?

Private land ownership is an absolute form of proprietary interest, and is equivalent to freehold title.[[20]](#footnote-20) Private land comprises about 27% of land in Nepal.[[21]](#footnote-21)

* + - * 1. Who can own land?

As a general proposition, only Nepalese citizens can own land in Nepal.[[22]](#footnote-22) Citizenship and land ownership is intimately linked in this way, and there are various issues with citizenship conferral and documentation in the country.[[23]](#footnote-23) Foreign owned companies can also own land in Nepal.[[24]](#footnote-24)

* + - * 1. How does it work?

Privately owned land can be acquired by purchase, inheritance, or allocation by Government,[[25]](#footnote-25) provided that the land recipient is a citizen of Nepal. This land is subject to payment of revenue,[[26]](#footnote-26) which generates a substantial amount of Government revenue.[[27]](#footnote-27)

Further, the Lands Act imposes land ceilings on private owners, restricting any family to 6.7 ha in Terai, 1.21 ha in Kathmandu Valley and 3.5 ha in all other hilly areas.[[28]](#footnote-28)

A substantial amount of privately owned land is leased by its owners to tenants. The *Ownership of Joint Housing Act, 2054* (1997) provides that leasehold arrangements must be documented in written contracts containing certain minimum information.[[29]](#footnote-29) The *Muluki Civil (Code) Act* (*the* ***Civil Code***) also requires that the lease agreements must be registered with the relevant authority.[[30]](#footnote-30) In addition, the Civil Code provides that, in the case of fundamental change, a tenant may seek restitution of any advance payments made and the cessation of due payments.[[31]](#footnote-31) More generally, the Lands Act sets out provisions relating to land tenancy, including the rights and obligations of tenants.[[32]](#footnote-32) These legal protections notwithstanding, a substantial amount of leased land in Nepal is informal and undocumented.

The following examples of leasehold arrangements prevail in Nepal:

Sharecropping

Sharecropping is where farmland is leased, and 50% of the tenants harvest is provided to the landlord as consideration for use of the land.[[33]](#footnote-33)

Rent for service

This is where a tenant obtains use of land by assuming a debt to the landlord. For the duration of the debt, the tenant is obliged to work productively on the landlord's land.[[34]](#footnote-34)

Fixed product/fixed rent tenancy

This kind of tenancy involves a tenant providing their landlord a fixed amount of a harvest (product) or money (rent) as consideration for use of the land. In fixed product arrangements, tenants assume a risk that their harvest will not meet the required rent for use of the land.[[35]](#footnote-35)

Rent for mortgage

This is where tenant cultivators use their land rights as collateral against a loan they take out with the landlord (e.g. for seed and other production inputs, for funding cultural events or for medical emergencies). In doing so, the tenant assumes an obligation to repay the mortgage to the landlord with interest in lieu of rent.[[36]](#footnote-36)

* + - 1. State land
         1. What is it?

There are two kinds of State land: public land and government land. Public land includes roads, water banks, pasture land, graveyards, monuments, temples, entertainment places and sporting places which have 'remained in use since ancient time and belong to the public not to any individual'.[[37]](#footnote-37) Government land refers to land which is directly used or controlled by the Government, including forests, lakes, rivers, canals, barren land, roads and government offices.[[38]](#footnote-38) State land constitutes 73% of Nepal's national territory.[[39]](#footnote-39)

* + - * 1. Who can own land?

State land is owned by the Government, though public land is maintained for the benefit of, and is used by, the public.

* + - * 1. How does it work?

Land owned by the State is treated in the same way as land owned by private persons.[[40]](#footnote-40)

A substantial reason for the Government enjoying ownership over such a large percentage of Nepal's national territory is because of its nationalisation of forests, wastelands and pastures.[[41]](#footnote-41) Further, the abolition of the customary system of tenure has resulted in more substantial governmental ownership of land.

* + - 1. Guthi land
         1. What is it?

Guthi land refers to land belonging to religious bodies in Nepal, comprising temples and monasteries as well as religious schools and hospitals. Guthi land can also include farmland. About 0.03% of land in Nepal is Guthi land.[[42]](#footnote-42)

* + - * 1. Who can own land?

Guthi land is owned by religious bodies.[[43]](#footnote-43)

* + - * 1. How does it work?

Guthi land is not subject to taxation.[[44]](#footnote-44)

* + 1. **Which, if any, of these types of tenure provide a high degree of security of tenure?**

In principle, Nepal has a structured and formal land system. Land registration is compulsory in Nepal, and registration is based on a deeds registration system.[[45]](#footnote-45) The registration of land gives rise to its legal existence, and when land is transferred the register should be updated.[[46]](#footnote-46)

The purpose of the registration system is to:

* establish certainty of ownership and land rights;
* allow for the collection of revenue (land tax) by the Government;
* facilitate the transfer of land; and
* ensure that information about land is easy to access.[[47]](#footnote-47)

Despite these legal formalities though, a number of commentators – including CARE Nepal and IFRC – have concluded that in practice, security of tenure in Nepal is undermined for at least three reasons.

* First, a considerable number of land owners do not have documentation or evidence to demonstrate their ownership. Existing records are often only kept in paper form, so are vulnerable to decay and destruction, particularly following natural disasters.[[48]](#footnote-48) Thus, about half of all land holdings in Nepal are unregistered and without formal ownership certification, with many land holders lacking the requisite personal identification or other documentation to formalise their interest in land.[[49]](#footnote-49) This is especially the case for groups of people who have historically exercised unrecognised customary ownership over land.[[50]](#footnote-50)
* Second, many of the leasehold relationships that exist are predicated on arrangements in which tenants are vulnerable to exploitation by landlords.[[51]](#footnote-51) This issue is exacerbated by the prevalence of leasehold arrangements in Nepal, and the substantial number of these arrangements that are established and maintained on an informal basis.[[52]](#footnote-52)
* Third, weaknesses in cadastral mapping and markers have created challenges for individuals seeking to identify with precision boundaries between different parcels of land. To the extent that cadastral mapping does exist, it is considered by some to be inconsistent and unreliable, and the inability to verify land boundaries often gives rise to boundary disputes between land owners.[[53]](#footnote-53)

These factors, among others, have led commentators to describe Nepal's land registration system as 'weak at best and often non-existent'.[[54]](#footnote-54)

* + 1. **How does tenure differ between urban and rural areas? If possible, please provide statistics about the prevalence of each type of tenure in urban and rural areas.**

Tenure in urban and rural areas is substantially the same. However, there are some practical differences between the ownership of land in urban and rural areas, including that:

* + - 1. rural tenants tend to be more disadvantaged than urban tenants as a result of their caste and social status, as well as having generally lower incomes;[[55]](#footnote-55) and
      2. undocumented or informal tenancy arrangements are particularly prevalent in rural areas (though as outlined above, this is an issue to some extent in Nepal's urban areas as well).[[56]](#footnote-56)

The prevalence of each type of tenure in urban and rural areas is not reliably known: surveys conducted on this point are drawn from small sample sizes or are out of date, the results of such surveys vary from time to time, and many land owners intentionally conceal the extent of their own land holdings for legal reasons.[[57]](#footnote-57) Nonetheless, there is some information available on differences between rural and land holdings, as follows:

* + - 1. urban land constitutes about 3% of land in Nepal compared to rural land which, including public forests, rivers and pastures, constitutes about 97%;[[58]](#footnote-58)
      2. the urban population is about 15% compared to the rural population of about 85%;[[59]](#footnote-59) and
      3. rural land distributions remain highly skewed, with 7.5% of farmers owning between a third and half of all rural land parcels.[[60]](#footnote-60)
    1. **What are the main government and non-government bodies (e.g. representative bodies) that administer or deal with housing, land and property?**
       1. Governmental bodies

The Ministry of Land Management, Cooperatives and Poverty Alleviation is the peak national governmental body for the growth and development of the land sector in Nepal. Its functions include:

* land administration and revenue collection;
* dealing with national and international issues related to land;
* management of Guthi land;
* implementing land reform programs; and
* conducting land mapping and land survey programs.[[61]](#footnote-61)

The Ministry of Agriculture and Livestock Development is the peak national governmental body responsible for the development, management and growth of the agricultural sector.

In addition, the Local Government Actmandates that various local bodies (Rural Municipality and Municipality) take responsibility for the distribution of land ownership certificates,[[62]](#footnote-62) the maintenance of land records, and the protection of public land.[[63]](#footnote-63)

* + - 1. Non-governmental bodies

The National Land Rights Forum (***NLRF***) is a national people's organisation which works on the land rights of farmers from an agricultural perspective.[[64]](#footnote-64) Its activities include organising and educating land-poor farmers, policy advocacy, mass mobilisation to pressure the Government, development of community leaders, and practicing community-led land reform and sustainable farming.[[65]](#footnote-65) The NLRF operates in 50 of Nepal's 77 districts.[[66]](#footnote-66)

Lumanti is an organisation working on land rights from a housing perspective, advocating for land allocations and regularisations for slum dwellers and squatters.[[67]](#footnote-67) Lumanti has facilitated the creation of other grassroots organisations, such as Nepal Mahila Ekata Samaj, which focuses particularly on female squatters and issues that affect them.[[68]](#footnote-68)

The Forum for Women, Law and Development (***FWLD***) is an organisation that pursues a human rights agenda to change discriminatory laws and practices in Nepal, including in relation to land issues.[[69]](#footnote-69)

* 1. Documenting tenure
     1. **What statutory instruments or legal documents (e.g. title deeds or leases) are used to create or transfer tenure?**

As Nepal has a system of land registration, the relevant legal instruments for the creation and transfer of tenure are those which result in the registration of land and update of the land register (known as the *Moth*). The registration of land is made at a District Revenue Office. The following documents are necessary for registration, along with the deed of *Rajinama* (Application) of Land:

* + - 1. For the seller:
         1. land ownership certificate;
         2. letter confirming access from the relevant ward;
         3. revenue clearance certificate;
         4. a copy of their citizenship certificate;
         5. witnesses (at least two); and
         6. capital gains tax clearance.
      2. For the buyer:
         1. a copy of their citizenship certificate;
         2. two photos; and
         3. the applicable fee.

The Permanent Account Number[[70]](#footnote-70) of both parties is mandatory if the transaction value is above one crore.

Following the land registration process, the prescribed authority will prepare a land ownership registration certificate as evidence of ownership in the land as set out in the registration records.[[71]](#footnote-71)

* + 1. **What non-legal documents or actions (e.g. verbal agreements or handshakes) are used to create or transfer tenure?**

Non-legal actions such a verbal agreements or handshakes cannot create or transfer land in Nepal.

* 1. Customary ownership
     1. **Is customary ownership of land legally recognised? If so, what is the basis for legal recognition (e.g. constitution, national legislation)?**

Customary ownership of land is not legally recognised in Nepal.

The Constitution only recognises 59 out of 81 indigenous peoples (***IPs***) in Nepal and although the Constitution makes provision for 'special, protected and autonomous regions' for IPs, this has not eventuated. In fact, the Government's policy regarding State restructuring and other development initiatives (such as declaring national parks, road expansion projects and hydropower station development) has led to the division of IPs' land and territory, and the exclusion of IPs from decision-making processes.[[72]](#footnote-72)

Further, Nepal does not have laws specifically recognising the 'rights to lands, territories and natural resources of IPs', because peoples' land rights are treated uniformly.[[73]](#footnote-73) However, the United Nations Committee on the Elimination of Racial Discrimination (***UNCERD***) is currently concerned about the absence of such laws.[[74]](#footnote-74) The Alternative Report of the Indigenous Peoples of Nepal submitted by a group of IP representative bodies to the UNCERD made a number of recommendations including recognising IPs' rights over lands, territories and natural resources as well as ensuring IPs are represented in the planning, implementing and monitoring of development projects.[[75]](#footnote-75)

The National Land Policy is currently being drafted and although it has been released to a few key stakeholders, it is not yet available to the public.[[76]](#footnote-76) This legal framework is expected to include improvements for IPs.

* 1. Informal settlements
     1. **What are the locations and boundaries of informal settlements?**

It is estimated that 10% of Nepal's population live in informal settlements.[[77]](#footnote-77) Rapid urbanisation continues to drive the growth of such settlements, particularly in cities like Kathmandu, Dharan, Birgunj, Bharatpur and Pokhara.[[78]](#footnote-78) Most informal settlements encroach riversides, roadsides and public open spaces, which are continually under threat from natural disasters and communicable diseases.[[79]](#footnote-79) In 2012, Kathmandu city alone had an estimated 29 riverside squatter settlements and 17 settlements located in other areas of the city.[[80]](#footnote-80) This figure has likely increased. Informal settlements in Nepal tend to be highly varied in respect of ethnicity, caste, place of origin, family structure and reason for squatting.[[81]](#footnote-81)

* + 1. **What kinds of tenure arrangements are in place in informal settlements?**

Those living in informal settlements do not have secure tenure or land title documentation. The Government regularly notes that security of tenure for those in settlements is a complex issue, but not much has been done to rectify the problem.[[82]](#footnote-82) In reality, lack of an effective policy has left the Government with no real alternative other than to tolerate the presence of informal settlements.[[83]](#footnote-83)

Tenure security varies from settlement to settlement. In those that are more established, occupants may have a significant level of 'de facto land tenure'.[[84]](#footnote-84) This is because they have existed for 20 or so years and their large population sizes offer a level of security. This is particularly the case for large settlements located within the Kathmandu Valley, some of which include permanent houses, schools, businesses and various other public buildings.[[85]](#footnote-85)

Two informal settlement federations have been recognised in Nepal under the initiative of Lumanti. Nepal Basobas Basti Samrakchan Smaj focuses on security of tenure and land rights, whilst Nepal Mahila Ekta Smaj champions the rights of women living in informal settlements.[[86]](#footnote-86)

1. Security of tenure of vulnerable groups
   1. Women
      1. **Can women legally own, rent or inherit land and housing?**

Both men and women have equal rights in respect of land and property in Nepal, and gender-based discrimination is prohibited.[[87]](#footnote-87) The property rights of women in Nepal are outlined in the Civil Code.

* + - 1. A woman's right to own property

Property will be considered a woman's private property if she has:

* earned and obtained the property before marriage;
* obtained the property from her maternal relatives during marriage;
* had the property given to her in writing by her husband or by the consent of all coparceners from the side of her husband rendering it as property having her sole right;
* obtained movable or immovable property from paternal relatives; or
* increased the property.[[88]](#footnote-88)

In all such cases, a woman shall have the right to own and dispose of such property at her will.[[89]](#footnote-89)

An adopted daughter has the same rights in relation to her adoptive parents as a 'natural' daughter has in relation to her 'natural' parents.[[90]](#footnote-90) However, an adopted daughter cannot claim property from her natural parents unless the adopted status no longer exists, or the adopted daughter received property before being adopted.[[91]](#footnote-91)

* + - 1. A woman's right to use property

A woman who owns property has the right to:

* use, sell or otherwise transfer the property;
* keep the property as mortgage or security;
* make any transaction of, or in any manner earn profits from, the property;
* make use of the area below, and space above, the property;
* destroy or terminate the property;
* change the nature of the property;
* protect the property in any manner, including by constructing buildings, walls, fences or boundaries around the property; and
* conduct legal proceedings to obtain or protect the property.[[92]](#footnote-92)
  + - 1. A woman's rights in shared property

Property earned by either a wife or husband (in the same family) is considered shared property of both, other than in the case of legal separation.[[93]](#footnote-93)

* + - 1. Loss of property rights as a result of divorce

A husband is not obliged to provide any part of shared property to (or otherwise meet the expenses of) his wife[[94]](#footnote-94) if the husband and wife divorce in the following circumstances:

1. if the wife deprives the husband of food and clothes, or banishes him from the home;[[95]](#footnote-95)
2. if the wife carries out any act of intrigue or conspiracy designed to lead to the husband's physical disability or result in any severe physical or mental suffering;[[96]](#footnote-96) or
3. the wife is held to have had sexual intercourse with any other man.[[97]](#footnote-97)
   * + 1. The right for a woman to be treated equally in respect of inherited property

All citizens of Nepal are equal before law, meaning that all offspring shall have equal right to ancestral property without discrimination on the ground of gender.[[98]](#footnote-98)

* + 1. **In practice, do they? If not, why not?**

In practice, there are barriers which prevent women claiming property entitlements. The International Organization for Migration reported in 2016 that 19.7% of women own around 5% of land throughout Nepal, and only around 11% have effective control over their property.[[99]](#footnote-99) Some of the common barriers preventing women from accessing their property rights include:

* + - 1. Access to a citizenship certificate

Only Nepalese citizens in possession of a citizenship certificate can own land in Nepal.[[100]](#footnote-100) Yet, in 2015, only 74% of eligible women were documented as Nepalese citizens.[[101]](#footnote-101) In 2014, the FWLD reported that 5.1% of undocumented citizens did not apply for a citizenship certificate because of uncooperative family members, and of this 5.1%, 90% were women.[[102]](#footnote-102) Muslim and madhesis women face the additional issue of it not being culturally acceptable for them to travel alone – travel is often required to obtain a citizenship certificate as the certificate must be obtained in the region where an applicant's father was born.[[103]](#footnote-103)

The CARE Report suggests that a further reason women struggle to access certificates is that many men do not want their daughters' citizenship documented, for the risk that their inheritance would be divided accordingly.[[104]](#footnote-104) Treatment of this kind is inconsistent with the Constitution's prohibition of gender discrimination. However, many families (particularly in rural areas) reportedly do not know or understand this prohibition, and divide the family inheritance among their sons out of tradition.[[105]](#footnote-105) [[106]](#footnote-106)

* + - 1. Registration fees

In 2012, the Government began offering a 30% fee discount on land registered in a woman’s name (with a larger fee discount applying in rural areas).[[107]](#footnote-107) In 2013, a joint ownership certificate policy was introduced, allowing a couple to jointly register in both their names for a fixed registration fee of NRP 100.[[108]](#footnote-108) Since the introduction of these policies there has been an increase in the number of women registering an interest in property from 10.3% of women in 2013 to 19% in 2014.[[109]](#footnote-109)

* 1. Indigenous groups
     1. **Is indigenous customary ownership (or custodianship) of land legally recognised?**

There are 59 castes of IPs recognised by the Government.[[110]](#footnote-110) Nepal is signatory to the *Convention Concerning Indigenous and Tribunal Peoples in Independent Countries (No 169)* (***ILO Convention No 169***) concerning the rights of indigenous and tribal people.[[111]](#footnote-111) The Convention requires free and informed consent with respect to decision making about lands that are occupied by an indigenous community, and that the rights of ownership and customary possession of land traditionally occupied by indigenous people should be recognised.[[112]](#footnote-112)

* + 1. **Does customary ownership provide indigenous people with a high degree of security of tenure?**

The Constitution has created separate Commissions of Minority groups, including a Dalit Commission,[[113]](#footnote-113) Indigenous Nationalities Commission,[[114]](#footnote-114) Madhesi Commission,[[115]](#footnote-115) Tharu Commission,[[116]](#footnote-116) and Muslim Commission.[[117]](#footnote-117) It is possible that further laws will be enacted for the special protection of the land ownership rights of these minorities and IPs. However, there is no other evidence of the implementation of IPs' rights set out in the ILO Convention No 169.[[118]](#footnote-118)

* + 1. **If not, what are the barriers to indigenous people owning and/or living on their land?**

A general challenge faced by IPs in proving land ownership is often their lack of official documentation. If an IP does not have any family members who have previously held a citizenship certificate (particularly if they are in remote areas), it can be very difficult to establish the lineage required to obtain a certificate. Community-based citizenship certificates can be obtained, but this is not widely known or understood in Nepal.[[119]](#footnote-119)

* + 1. **Is there conflict between indigenous groups regarding land ownership? If so, to what degree? Are there mechanisms for resolving these conflicts?**

Assuming the absence of proper registration, land ownership disputes are often resolved locally (rather than through a court or arbitration system).[[120]](#footnote-120) Local dispute resolution procedures are informal, and are not necessarily conducted with due process, leaving outcomes open to bias.[[121]](#footnote-121) Dispute resolution through a court or arbitration system is costly and time consuming, resulting in a lack of access to justice for underprivileged and marginalised groups.[[122]](#footnote-122)

* 1. Minority groups
     1. **Can minority groups (i.e. ethnic minorities, immigrants, stateless people) legally own and/or rent land and housing?**

Nepalese citizenship is principally conferred on the basis of descent and birth. However, the *Citizenship Act, 2063* (2006) (the ***Citizenship Act***)[[123]](#footnote-123) and Constitution[[124]](#footnote-124) recognise Naturalized Citizenship on the basis of marriage.

In relation to citizenship by descent, all children found in the territory of Nepal whose paternal and maternal addresses are undetermined are considered citizens of Nepal (by descent) until their father or mother can be identified.[[125]](#footnote-125)

Otherwise, the law does not regulate the ownership or leasing of land differently for ethnic minorities, immigrants and stateless people.

* + 1. **In practice, do minority groups legally own and/or rent land and housing? If not, why not?**

Minority groups can legally own and rent land and housing in Nepal.

However, the barriers faced by minority groups are similar to those affecting other vulnerable groups. Additional measures have at times being implemented to address this vulnerability including following the 2015 Nepal earthquake, when the *Reconstruction of Earthquake Affected Structures Act, 2072* (2015) was enacted with the objectives of: (i) allowing the immediate construction of sustainable and planned houses and structures destroyed by the earthquake; and (ii) ensuring the relocation and resettlement of displaced people and families.[[126]](#footnote-126) Special arrangements were made to facilitate construction for vulnerable groups,[[127]](#footnote-127) including single woman over 65 years of age, senior citizens over 70 years of age, minors below 16 years of age, and disabled persons with a Disabled Identity Card (Red and Blue).[[128]](#footnote-128)

* 1. Landless people/squatters
     1. **Do landless people/squatters have rights to land and/or housing (e.g. adverse possession)? If so, are those rights respected?**

There are laws and policies in Nepal that support the rights of landless people to land and housing, as follows:

* the Constitution establishes a right to housing for all citizens,[[129]](#footnote-129) and requires the State to make one-off grants of land to the landless *Dalit* caste;[[130]](#footnote-130)
* part 4 of the Constitution (Policies of the State) describes the need to 'identify … the landless and squatters and rehabilitate them by providing housing, housing plots for residence, and cultivable land … for their livelihoods';[[131]](#footnote-131)
* The Land Use Policy 2015 includes a strategy to develop low-cost settlements for landless citizens and those with minimal access to land;[[132]](#footnote-132) and
* section 6(5) of the LandSurvey Act provides for the possibility of land ownership based on a principle of 'long past' possession or cultivation.[[133]](#footnote-133)

In practice, these laws and policies are not enforced, and land rights for landless people and squatters are not recognised. In many cases, laws have not been amended to reflect constitutional guarantees, and Government policies are not sufficiently co-ordinated.[[134]](#footnote-134)

Any improvements in the enjoyment of land rights by landless people and squatters are generally facilitated by grassroots organisations.[[135]](#footnote-135) Certain organisations provide 'family ID cards', which are recognised by some local authorities as entitling landless individuals to basic services (eg mains water) and protection against eviction.[[136]](#footnote-136) These informal processes are subject to local interpretation and attitudes, which represent a significant challenge to widespread implementation.[[137]](#footnote-137)

* 1. General questions
     1. **Are there any other persons or groups that face difficulties in accessing or maintaining secure tenure (for example, due to internal displacement)?**

Since Nepal stopped issuing Refugee Certificates for Tibetans in 1959, there is some evidence that Tibetans who have fled to Nepal have been marginalised, and have difficulty with secure tenure and freedom of movement.[[138]](#footnote-138)

Otherwise, we are not aware of persons or groups that face unique difficulty in accessing or maintaining secure tenure.

1. Eviction, Expropriation and Relocation
   1. Eviction
      1. **Are there laws or regulations prohibiting forced evictions?**

The Constitution guarantees the right to housing under Part 3 (Fundamental Rights and Duties). Article 37 provides that '(1) Every citizen shall have the right to appropriate housing; and that (2) No citizen shall be evicted from the residence owned by him or her nor shall his or her residence be infringed in accordance with law'.

The Constitution allows the State to acquire land, provided that such an acquisition is in the public interest and that the Government compensates landowners for land-taking by paying an amount in cash at market value.[[139]](#footnote-139) Public interest is not defined. The Lands Act also requires the State to recognise the rights of registered tenants, and to divide compensation equally between them and the landowners in the case of an acquisition.[[140]](#footnote-140)

* + 1. **In practice, are those laws adhered to?**

In practice, eviction is common, forceful, and those impacted receive little or no compensation.[[141]](#footnote-141) Landowners evict unregistered tenants on a regular basis, often because they fear losing their land.[[142]](#footnote-142) Informal tenure is not recognised, and without legal documentation the risk of eviction is constant.[[143]](#footnote-143) Conflicts between the Government and landless people is common, with forceful evictions commonplace, generally without compensation or offers for resettlement.[[144]](#footnote-144) It is estimated that as at 2017 the then current Government had evicted 713 landless households for encroaching on community or State land.[[145]](#footnote-145)

In respect of internally displaced people occupying informal settlement camps, no forced eviction has been reported, but camp dwellers, especially in Kathmandu, live in fear of eviction from their temporary shelters.[[146]](#footnote-146)

* 1. Expropriation
     1. **Are there laws or regulations permitting the government to expropriate land?**

The Constitution allows the Government to expropriate land 'in the public interest'.[[147]](#footnote-147) The Land Acquisition Act states that the Government has the right to acquire any land at any place for any public purpose it deems necessary, including, under certain circumstances, the right to acquire land at the request of an institution.[[148]](#footnote-148)

The Land Acquisition Act provides that such expropriation must follow certain steps, including:

* + - 1. the requirement of the Government to notify the concerned persons of its intention to acquire the land;[[149]](#footnote-149)
      2. the right of the landowner to file a complaint with respect to the notification within seven days after that notice;[[150]](#footnote-150)
      3. the requirements for a decision on such a complaint to be typically pronounced within 15 days of the complaint;[[151]](#footnote-151) and
      4. if the decision allows the acquisition of land to proceed, the right of the relevant government official to take possession of the land.[[152]](#footnote-152)

The requirements of the Land Acquisition Act do not apply to any land acquired by the Government through private negotiations with landowners.[[153]](#footnote-153)

* + 1. **If so, are those laws or regulations applicable in the context of a disaster?**

Under the procedure set out above, the Government has the right to take possession of land within a few weeks of notifying the landowner of the intended acquisition. These timeframes may not be appropriate in a disaster context. However, the Land Acquisition Actalso provides that if an acquisition of land becomes urgently necessary, the Government may order the relevant local officer to initiate the necessary action for acquisition of land, and the local officer may, in turn, issue a notice to a landowner and take possession of the land after the notice is issued. Other than with respect to compensation amounts, the landowner will not have a right of complaint in such a case.[[154]](#footnote-154)

The Land Acquisition Act states that this right may arise where the Government takes such an action to ensure the safety of life and property against extensive damage, in a natural disaster situation, or in any other extraordinary circumstances.

* 1. Relocation
     1. **Are there laws or regulations governing relocations?**

In the aftermath of the 2015 Nepal earthquake, various laws were enacted, including to assist with the losses and relocation of victim families, as follows:[[155]](#footnote-155)

* + - 1. *Reconstruction of Earthquake Affected Structures Act, 2072* (2015);
      2. *National Reconstruction and Resettlement Policy, 2072* (2016);
      3. *Procedure for Loan Financing for Reconstruction of Earthquake Affected Residential Houses, 2072* (2016);
      4. *Procedure for Transfer and Relocation of Risky Settlements, 2073* (2017); and
      5. *Creation of Consolidated Residency Procedure, 2074* (2018).

These laws provide that:

* If it is inappropriate to resettle a family in the place they previously resided at, relocation to an alternative safe place should be managed.[[156]](#footnote-156) Families are not permitted to reside in certain areas marked as dangerous.[[157]](#footnote-157)
* A Consumer’s Committee should be formed to determine safe places for relocation, and relocation should be made through Consolidated Residency Planning.[[158]](#footnote-158)
* Reconstruction of a settlement should generally occur in the place a settlement previously existed, and where relocation is necessary, the settlement should be relocated nearby or in the same district, to minimise any negative impact on peoples' culture and tradition.[[159]](#footnote-159)

The Government also prepared a Resettlement Policy Framework, which prescribes the approach to resettlement for earthquake-affected families, including the provision of grants for reconstruction and (if necessary) land.[[160]](#footnote-160)

* + 1. **Are there any other laws or regulations (i.e. human rights instruments) that are applicable to relocations?**

There are other laws which provide for relocation, such as the *Mitigation and Management of Risk of Disasters Act, 2074* (2018). Chapter 7 of this Act establishes a District Level or Local Level Disaster Management Committee, which functions to help relocate the people of areas affected by the 2015 earthquake, and construct temporary settlements in safe places. Section 21 requires Government offices, NGOs, local bodies, community, volunteers, civil society, private bodies, and individuals to help the collection of data, evaluation of losses, rescue, resettlement and reconstruction following natural disasters.[[161]](#footnote-161)

The Resettlement Policy Framework states that any replacement land provided to affected households should be screened for compliance with Nepali law and World Bank policies.[[162]](#footnote-162)

Separately, relocation has also been provided for to assist with project development initiatives. For instance, clause 8.2.1 of the Project Development Agreement states that the Land Acquisition Plan has been developed to ensure that 'the land acquisition process for the Project is undertaken in accordance with the Laws of Nepal and this Agreement, including measures to ensure satisfactory and timely resettlement of Project Affected People and Payment of appropriate compensation wherever necessary'.[[163]](#footnote-163)

* 1. Compensation
     1. **Are there laws or regulations providing compensation for people who are relocated, forcibly evicted, or whose land is expropriated?**

The Constitution provides that the Government's right to expropriate land in the public interest is subject to the requirement to compensate concerned persons as prescribed by the relevant legislation.[[164]](#footnote-164)

The Land Acquisition Act sets out steps for determining persons eligible for compensation, including:

* + - 1. the requirement for concerned persons to submit an application for compensation within a time limit of 15 days (or greater if so permitted in the notice of acquisition);[[165]](#footnote-165)
      2. the requirement for a local officer to review the applications and issue a notice listing persons eligible for compensation;[[166]](#footnote-166)
      3. the right of a person not satisfied with the list to file a complaint within 15 days of the notice;[[167]](#footnote-167) and
      4. the requirement for a decision on such a complaint to be typically pronounced within 15 days of such complaint.[[168]](#footnote-168)

The Land Acquisition Act prescribes that compensation, payable in cash, shall be determined by a committee of relevant Government officials.[[169]](#footnote-169) Alternatively, it provides that if a landowner so wants, compensation may be obtained in the form of land elsewhere rather than cash.[[170]](#footnote-170)

When determining compensation, the committee must consider any relevant guidelines issued by the Government, losses likely to be suffered by relocated persons as a result of relocation, the price of the land at the time the notice of acquisition was published, and the value of any items acquired along with the land.[[171]](#footnote-171) This compensation regime also applies to land acquired by the Government in a disaster context or emergency situation.[[172]](#footnote-172)

A separate regime applies with respect to Guthiland, or land held for charitable purposes.[[173]](#footnote-173) The*Guthi Corporation Act, 2033* (1976) provides the Government with the right to acquire such land at a concessional rate if the Government believes it is necessary.[[174]](#footnote-174)

* + 1. **In practice, are these laws or regulations adhered to?**

Although the legislative regime provides for compensation based on the value of the land, in practice, academic sources suggest that there is a risk that in parts of Nepal where land markets are weak or non-existent, landowners, who may typically be poor and vulnerable, will be insufficiently compensated.[[175]](#footnote-175) These sources suggest that as there is limited regulation of the land market, and a majority of transactions in rural areas take place informally between parties. There is also a concern regarding the extent of relevant information available to the Government when making compensation decisions.[[176]](#footnote-176) The inability for concerned persons to negotiate the compensation amount further exacerbates this risk.[[177]](#footnote-177)

In practice, the Resettlement Policy Framework recognises that not all persons affected by an acquisition will be compensated.[[178]](#footnote-178) Landowners, or persons with legal title (but no formal rights) are entitled to full compensation. In relation to tenancy land, the landowner and the tenant will each receive 50% compensation for the affected land. Temporary tenants or lessees will be compensated on the basis of the lease agreement. However, academic sources suggest that persons such as squatters or informal tenants may not be recognised as persons for the purpose of the compensation regime.[[179]](#footnote-179)

The Resettlement Policy Framework also provides that the compensation regime does not explicitly consider the long-term impact of the acquisition on the concerned persons, and for assets acquired along with the land, does not specify the criteria for determining compensation.[[180]](#footnote-180) This may result in persons being inadequately compensated.

Although the legislative regime allows for compensation in the form of land, rather than cash, the Resettlement Policy Framework recognises that this may not always occur.[[181]](#footnote-181)

Another concern recognised in the Resettlement Policy Framework is that while the legislative regime establishes certain timelines, it does not provide a time before which compensation must be provided to the concerned persons, and this may result in delays in compensation payments.[[182]](#footnote-182)

* 1. Shelter cluster
     1. **Is there an active shelter cluster in Nepal?**

There are no active shelter clusters currently operating in Nepal.

Since Nepal is considered to be at high risk of suffering a natural disaster, there is a Shelter Cluster Contingency plan in place for activating and coordinating responses to them. Additionally, due to floods and landslides during the 2017 monsoons, a national monsoon contingency plan and cold wave preparedness plan are now in place for shelter coordination in four districts.[[183]](#footnote-183)

* + 1. **If not, has the shelter cluster been activated during any previous disasters?**

Shelter clusters have been activated in Nepal during previous disasters, including during the 2008 Koshi floods and the 2015 Nepal earthquake.

In 2008, a breach of the Koshi embankment caused close to 70,000 people to flee to high ground to avoid flooding. In response, the cluster system in Nepal was activated and formalised, with IFRC taking on the role of convenor of emergency shelter as part of the cluster response.[[184]](#footnote-184)

The 2015 Nepal earthquakes left over half a million homes destroyed and many additional households damaged. The Nepal Shelter Cluster, led by the Department of Urban Development and Building Construction and IFRC,[[185]](#footnote-185) delivered 83% of affected households with corrugated iron sheets for temporary shelter, or a cash equivalent from the relevant Shelter Cluster partners.[[186]](#footnote-186) By the end of 2015, Shelter Cluster Nepal handed over the responsibility for coordinating the recovery of affected districts to the Housing Recovery and Reconstruction Platform – Nepal.[[187]](#footnote-187)

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1. Glossary of abbreviated and defined terms

(***FWLD***) Forum for Women, Law and Development

(***IPs***) Indigenous peoples

(***NLRF***) National Land Rights Forum

(***UNCERD***) United Nations Committee on the Elimination of Racial Discrimination

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