

THE
CARTER CENTER



An Update on Implementation

June 20, 2012

I. Introduction

Land is central to the livelihoods of many Nepalis, and political struggles over land and its equitable distribution have a long history. Land was also a central feature of Nepal's decade-long conflict. In the then-Communist Party of Nepal-Maoist's initial 40-Point Demands, issued in 1996, the party called for "land under control of the feudal system [to be] confiscated and distributed to the landless and homeless" and for land belonging to certain classes of people to be "confiscated and nationalized."¹ To advance this agenda and to consolidate political control in th.-Fth

land it had seized in the hills, mountains, and parts of the Eastern and Central Tarai, although some outstanding cases remained in these areas. By contrast, most of the land captured in the Mid and Far-Western Tarai (where the largest number of seizures had reportedly occurred) had not been returned or had been returned only conditionally. Meanwhile, efforts to formulate land reform policies and make arrangements for landless people were stalled and largely unimplemented.

This report provides a brief update on the status of implementation of land commitments at the local level, and also includes an annex of 32 brief district descriptions. In particular the report focuses on the period since August 2011. Following the election of Prime Minister Baburam Bhattarai on Aug. 28, 2011, the government and the UCPN(M) recommitted to land return and reform, commitments which were codified in the Nov. 1, 2011, Seven-Point Agreement among major political parties. Carter Center observers have followed up at the local level to assess the impact of these commitments on the ground.

Given the current political context, in which the Constituent Assembly has been dissolved and the path for

only, and some believe that once those processes are complete the peace process is over. However, there remain many significant commitments in the CPA outside of those related to Maoist combatants which are likely to continue to resurface in the medium to long term if not addressed properly in the short term. For this reason, The Carter Center believes there is value in continuing to publicly report on conflict-era land issues at the local level and to maintain an updated public record of the current status of such issues throughout the country which can be built upon in years to come. This update report is issued in this spirit.

A note on how to read this report: First, although both land reform and land return are important

been only partially fulfilled. Interested readers are encouraged to review the June 2010 report, which contains more in-depth discussion of the issues covered in this brief update. The main findings of the 2010 report are summarized below:

i) Scale and status of conflict-era land seizures: Carter Center observers found in 2010 that the majority of land seized by the Maoists during the conflict was in the Tarai, with the Mid and Far-Western Tarai seemingly the most affected in terms of number of cases. No comprehensive credible and impartial records regarding the seizures existed, making it nearly impossible to accurately estimate the total amount of seized land, how much had been returned, and how much had yet to be returned. In some Tarai districts, much land seized by the Maoists during the conflict appeared to have been returned. By contrast, most land seized by the Maoists during the conflict in the Mid and Far-Western Tarai appeared not to have been returned. Nearly all land appeared to have been returned in four of five hill and mountain districts visited, with Sankhuwasabha being the exception.

ii) Issues surrounding conflict-era land return: In 2010, observers found that there was no clear, agreed, nation-wide formal process for land return. Maoist policy regarding whether to return land seemed to be largely determined by district-level representatives and, to a lesser extent, area or VDC-level representatives. Most land return appeared to have taken place at three different intervals: shortly after the signing of the CPA; just prior to the 2008 Constituent Assembly (CA) elections; and while the Maoists were leading the government from August 2008 to May 2009. In many cases where the Maoists had seized land from targeted individuals, land return was conditional whereby the landowner engaged in informal negotiations with local Maoists and farmers to gain some access to the land. Some landowners were also reportedly coerced into distress sales whereby the Maoists exerted pressure on them to sell their land, often well below market value. While some landowners approached the district administration for assistance, the majority were reluctant to pursue legal and administrative means, believing local authorities to be either unable or unwilling to address land seizure cases.

iii) New land seizures: Carter Center obserTm[() TJ49h(355.85 Tm[()]7(r)-3(TmET E9629h(355.85)-8e)9h28 39

CPN-Matrika cadres. For example, in Siraha, a small plot of land seized by CPN-Matrika after the CA elections reportedly remains captured and is occupied by 5-10 formerly landless Dalit families.¹⁶

2. Also similar to 2010, Carter Center observers found that land continues to be returned through informal negotiations between the Maoists, landowners, and tillers, rather than through a formal, state-led process.

In the absence of a formal, state-led process for land return, informal negotiations on conflict-era land cases continue to take place and to result in a variety of outcomes. These outcomes range from the landowner regaining all powers over the land, to conditional return in which the landowner is able to collect some share of the harvest from tenants but without other rights (such as the ability to sell the land or change the tenants), to the landowner resolving the issue by selling the land, sometimes at below-market rates. Political party members, landowners, farmers, and government officials sometimes apply the term “return” flexibly to describe all these dynamics.

For example, in at least three VDCs of Dang, UCPN(M) cadres facilitated a settlement between landowners and tillers, in which the tillers were to receive legal title to a certain percentage of the land, ranging from 22 to 50 percent. The chair of the Maoist-affiliated All-Nepal Peasants Association-Revolutionary described the arrangement as an “interim solution” in the absence of comprehensive government land policy. In Makwanpur, one landowner joined the UCPN(M) in order to regain his land.

In Bardiya, observers noted continued informal and conditional return of land over the past year, nearly all of which was the outcome of personal negotiations.¹⁷ One landowner in the district explained, “I do not believe in using the administration. They cannot return the land and if they forcefully do so that could cause poor relations with my tillers. I believe I can solve this by a personal approach.” Some landowners and tillers reported that they began sharing one-half of the paddy harvest beginning this year, which is often described as a kind of “return.” Tillers in one VDC with many cases of capture confirmed to observers that they had begun giving crops to the landowner because they assessed that they would be at risk of removal from the land if they did not. A government official in the district noted that unconditional return was not yet possible but that the informal agreements for tillers to provide a share of crops to the landowners represented an improvement. Observers noted that many owners of seized land in Bardiya continue to reside in the district or in neighboring Banke, and are therefore able to visit their property frequently and maintain contact with the tillers, UCPN(M), police, and administration. This may be an important factor in explaining continuing informal return in the district over the past year.

3. Some also continues to take place through coerced sales, in which Maoist cadres or party-affiliated brokers allow the landowner to sell the land but at below-market rates.

In some districts, Carter Center observers heard credible allegations that local Maoists are benefiting financially from transactions of conflict-era seized land, for example by purchasing the land at low rates from landowners and then reselling it at market prices. The Carter Center described a number of such cases in its June 2010 report. Such sales reportedly continue in districts including Dang and Siraha, and observers verified a case in Kailali in which land seized by the UCPN(M) was “returned” for the purpose

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of being sold to members and sympathizers of the party. In Morang, one owner of seized land reportedly sold the property to a Maoist, who then resold some land in plots and distributed others to the occupants.

Committee member and Baidya supporter

Similarly, in Morang, a plot of land totaling over 100 bighas had been split among several hundred families, many of whom were reportedly landless people

- 6. After government instructions in September 2011, Carter Center observers noted a renewed effort by District Administration Offices (DAO) to request people with captured land to submit the details of their cases. In a few districts visited, the DAO also made some effort to investigate submitted claims. However, to date no further action has been taken, reportedly due to a lack of further central-level instructions.**

Following the government's announcement in September 2011 that seized land would be returned, DAOs in many districts visited began collecting data on alleged seizures. However, DAOs reported having no further orders beyond data collection, and some DAOs said they had received no land-related instructions at all. In general, local government officials had not taken proactive measures to facilitate land return. Rather, in many districts they continued to see land return as a political process that required local and national political agreements prior to administrative action to move it forward.

In Dang and Kanchanpur, CDOs had instructions to collect data but no further details on the process. In Argakhanchi, the CDO asked political parties whether cases had been resolved but apparently had not received a response and had not taken further efforts to investigate. In Udayapur, the CDO intended to form a committee including the LPC coordinator and party representatives to collect data but had not taken any steps at the time of the observer team's visit. According to follow-up data collected by telephone, a subsequent field visit by the committee was cancelled, reportedly due to budget constraints, though in April the committee issued a new appeal for landowners to register any complaints. In Bardiya, the CDO joined a taskforce on land return that included two members each from the NC, UCPN(M), and UML, as well as the Superintendent of Police. However, the taskforce was not a body with legal

More commonly, LPCs have not been involved in land-related disputes. This is consistent with previous Carter Center findings that only a minority of LPCs have engaged in conflict mediation or resolution efforts.²⁶ In Bara, many interlocutors believed the LPC could in principle be a good forum to address issues related to land seizure but said the LPC was not functioning well enough to assume this role in practice.

8. Land return would likely lead to local conflict in some areas if pursued through forceful evictions.

Attempts to forcibly evict farmers tilling seized land would likely result in some, and perhaps many, cases of conflict between various configurations of farmers, landowners, security forces, local party cadres including Baidya faction members, and members of non-party-affiliated landless and squatters' groups. Of particular concern are large tracts of occupied public and private land, where hundreds to thousands of people farm small plots; many of these people claim to be otherwise landless or to own agriculturally marginal land in high hill districts and say they have no alternatives to farming captured property.

The UCPN(M), and particularly the Baidya faction, has assisted occupants of seized land in organizing resistance to potential eviction in several districts visited by observers. In Kanchanpur, the party issued a press release opposing the government's decision to return the land and pledging to act against any government attempts to forcibly remove the squatters. In Kailali, a squatters camp on captured private land in Shreepur VDC poses a potential conflict-risk between the state, Maoists, and squatters. A 25-member struggle committee under the Revolutionary Farmers Association has been formed in the camp, headed by a UCPN(M) member and long-term resident. The party also transported approximately 15 squatters to Dhangadhi to participate in a Dec. 4, 2011, rally against land return and reportedly hired two buses to bring occupants to a second rally on April 6, 2012. The struggle committee president pledged that "[The government] will not remove us. If they try, we will not hold back. We will face them, regardless of who is in government." Memories of the December 2009 incident at Dudejhari forest, in which squatters clashed with police resulting in four deaths,

newly-seized land.²⁹ A senior Maoist leader and Baidya faction member in Baglung noted to observers in February 2012 that the statement was released only to put pressure on the government and involved land that was already under occupation by landless people, some of whom had been invited by the Maoists. Senior police and administration officials in the district said that there had been no complaints of new capture.³⁰

The one exception to this trend was in Kapilvastu, where observers received reports of several new cases of captured private land. The observer team followed up on one case, in which local Maoists admitted to becoming involved in a dispute over an allegedly fraudulent land sale, in which the landowner reportedly sold land to tenants without providing legal ownership documents and then re-sold the land to another buyer. Otherwise, nearly all land captured in the district during the conflict appeared to have been returned.³¹

V. Conclusions and Recommendations

Despite administrative and political attention to land return following the election of Prime Minister Bhattarai in August 2011 and the Nov. 1 Seven-Point Agreement, this attention has not resulted in significant new return of seized land. Much political effort following the November 2011 agreement focused understandably on the integration and voluntary retirement of Maoist combatants, constitutional issues, as well as ongoing factional disputes within parties. To date, there has not been sufficient political will and effort from any side to reach agreement on principles for land return and land reform and to design and enforce mechanisms for their implementation. Early steps by the government and some DAOs to collect data on alleged cases of capture were encouraging but were not accompanied by policies and procedures to move forward with resolution of outstanding cases or sufficient political consensus to move the process forward.

The complexity and specific histories of many land cases demand frameworks and principles that are sufficiently flexible to accommodate local realities, if conflict and injustice are to be minimized. At minimum, the government and political parties should be sensitive to the conflict potential around seized land. More proactively, national actors can look for opportunities to take small but realistic steps to move the return process forward in the future, including by continuing efforts to build and improve records of land ownership and alleged capture.

Over the long run, the phenomenon of land capture

following recommendations are put forward in the spirit of cooperation and respect, and with the hope that they will provide useful discussion points for future action.

Future steps for consideration:

Refrain from provocative actions, such as forced evictions or encouraging confrontation between squatters and security forces. Observers have noted the potential for violence between occupants of seized land and security forces continues in some cases. Moreover, the complex dynamics underlying many cases would not be effectively addressed by an eviction-based approach. Similarly, political parties should refrain from using vulnerable populations for political ends, for example by encouraging violent confrontation between landless people and the state.

Continue efforts to create an official, credible, and impartial record of seized land nationwide. Inaccuracy of official data on land, including seized land, makes it difficult to determine how much land was seized during the conflict and how much remains unreturned. Steps by the government to solicit applications for return of land through District Administration Offices since September 2011 are

ANNEX: Status of seized land, by district

Based on data collected from September 2011 to February 2012

How to read this annex: These descriptions are intended to be indicative of the overall scope and scale of land seizures in the districts visited by Carter Center long-term observers, as summarized by interlocutors in district headquarters and selected VDCs. The descriptions should not be considered comprehensive. Readers may also wish to review the more detailed case studies of the following districts, published in the Center's 2010 report "Land Commitments in Nepal's Peace Process: What Has Been Achieved to Date?": Baitadi, Dang, Dhanusha, Gorkha, Kailali, Kapilvastu, Morang, Nawalparasi, Ramechhap, Sankhuwasabha, and Surkhet.

The annex also provides the number of cases of alleged capture officially registered in each district, according to District Administration Offices (DAOs). These numbers should be read as indicative and not exact, and may have changed in some places prior to the publication of this report. In some cases, officials were unsure if particular cases had been formally registered. Furthermore, not all cases of alleged capture implicate the UCPN(M) or its supporters of involvement, not all allegations of capture are necessarily conflict-related, and some of the complaints may be related to other sorts of land disputes.

The division of districts within the annex is by alphabetical order within each of three categories: districts with a significant number of outstanding land captures reported; districts with smaller numbers of outstanding land captures reported; and districts with few to no outstanding captures reported. Several factors were considered in assigning districts to these categories including the assessment of various interlocutors of the number and seriousness of outstanding cases and the number of cases reportedly filed with the District Administration Office.

DISTRICTS WITH A SIGNIFICANT NUMBER OF OUTSTANDING LAND CAPTURES REPORTED

1. Bara

Number of cases of alleged capture registered with the DAO: DAO reported no cases registered

General summary: Interlocutors generally agreed that more land was seized in Bara during the conflict than in neighboring Tarai districts, and there remained many outstanding cases of land capture. In addition to several prominent cases of large parcels of captured land, there were allegedly many cases of smaller capture still outstanding. Maoist representatives stated that 4000-5000 people were still living on plots of seized land. Landowners affiliated to the Nepali Congress and Sadbhavana Party claimed that over 100 bigha had been seized in the VDC, belonging to around 25 families. Owners of seized land complained of a continuing atmosphere of Maoist intimidation. The VDC with the largest ongoing conflict-era land issues was reportedly Gadhalal. Tedhakatti and Dumarwana VDCs were also reportedly affected. Where seized land had been returned, it reportedly was either to people with political connections or where individual landowners made private payments to the occupants. Observers confirmed one case in which a landowner had regained possession of his land by making a direct payment to the occupants.

2. Bardiya

Number of cases of alleged capture registered with the DAO: 259

General summary: Significant amounts of private agricultural land were captured in the district during the Maoist insurgency. The Rajapur area of western Bardiya was

from the DAO stated that 892 bigha of land were captured in 24 VDCs, political party and civil society estimates ranged from 1000 to 2100 bigha.

Following the Nov. 1, 2011, Seven-Point agreement, hardline leaders of the UCPN(M) prevented land return and demanded alternatives for tillers, landless, and squatters. District leaders from the establishment faction held similar views and said that a clear central committee decision should be taken by their party on the is

General summary: Land capture was identified as a serious issue by all interlocutors interviewed in Kailali. DAO and civil society representatives estimated that 2000 bigha of land was captured from around 240 families in the district during the conflict. Reportedly, little to no captured land has been fully returned. Most cases of alleged seized land were from the central and eastern part of the district, including Baliya, Chuha, Dhansingpur, Masuriya, and Narayanpur VDCs, as well as Tikapur municipality. Observers were informed about three outstanding cases where Maoists had permitted conditional return or sale of captured land. For example, the Maoists had conditionally returned land in Chuha VDC for the purpose of having it sold to members and sympathizers of the Maoist party.

The Baidya-led hardline faction, which is dominant in Kailali, has strongly opposed the government's decision to return the captured land. They demanded alternative arrangements for landless people currently residing on those lands, a sentiment that was also shared by the leaders from the establishment faction in the district. Several interlocutors believed that land return could present a challenge to future security. They cited the example of a struggle committee under the Revolutionary Farmers Association which was formed in the squatters' camp in Shreepur VDC to oppose possible eviction by the government. In the meantime, UCPN(M) members from both the establishment and hardline factions were enjoying the benefits of land capture, particularly access to surplus crops, commissions from land sales, and rent payments. However, factionalism within the party has apparently disrupted the distribution of benefits.

According to government and NGO sources, hundreds of Freed Kamaiya families who were not given land upon their emancipation have been living on public land at various sites in the district.

6. Kanchanpur

Number of cases of alleged capture registered with the DAO: 31

General summary: Most cases of alleged remaining seized land were from several VDCs in the eastern part of the district, including Krishnapur, Shankarpur, Shreepur, and Rampur-Bilaspur. Political party estimates of the amount of land seized during the conflict ranged from 27 bighas to 150 bighas. Multiple sources interviewed said that the largest piece of land still under seizure belonged to Kalyan KC and his family, totaling 36 bighas. Several non-Maoist interlocutors noted that the Baidya faction was influential in the district and would complicate return of seized land. UCPN(M) district leaders have stated publicly that they would attempt to block any government attempts to forcibly return land. In the past several years, UCPN(M) representatives have allegedly offered some owners of seized land the option to sell at below market rates.

The National Land Rights Forum reported that there were many landless people living on public land around the district. For example, around 600 landless squatters were reportedly living on 380 bighas of land belonging to Tikapur Multiple Campus. Landless affiliated to all three major parties – NC, UCPN(M), and UML – reportedly reside on this land. BASE reported that hundreds of Freed Kamaiya families had also settled on public land following their emancipation in 2000.

7. Sankhuwasabha

Number of cases of alleged capture registered with the DAO: 65

General summary: Land seizure was reported to be an ongoing issue in Sankhuwasabha. According to several interlocutors, there have been no changes in the status of the conflict-era captured land. The Baidya faction is influential in the district and its representatives were firmly standing against any land return. On Dec. 5, 2011, district-level Baidya faction representatives issued a press release claiming that they would oppose the return of captured land in Sankhuwasabha. They said that return of seized land

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Private land taken over by the Armed Police Force (APF) in 2002 at Siddheswor VDC has reportedly been returned to the original landowners. However, the owners claimed that they had not received rent owed by the APF from 2003 to 2011.

3. Dailekh

Number of cases of alleged capture registered with the DAO: DAO reported no cases registered

General summary: Reportedly, very little land was seized in Dailekh during the insurgency. Most of the seizure was of private buildings. All seized land has reportedly been returned and interlocutors did not consider land capture to be an issue in the district.

4. Darchula

Number of cases of alleged capture registered with the DAO: DAO reported no cases registered

General summary: Conflict-era captured land was reportedly not a major issue in Darchula and most captured land had reportedly been returned. Except for a small number of unconfirmed cases from Latinath and Tapoban VDCs, interlocutors reported that there were no significant cases of land seizure in the district. TJBie1iieraTm[72.024 5517(ber)]()er)-5()-162(i5BDC BT1 0 0 1 72.024 583.54 Tm[()] TJE)-5()-162(iAM

General summary: Interlocutors stated that not much land was seized during the insurgency and that
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14. Taplejung

Number of cases of alleged capture registered with the DAO: DAO reported no cases registered

General summary: Taplejung was reportedly one of the districts least affected by conflict-era land seizure. Interlocutors generally agreed that relatively little land was formally captured and that most or all of that land has been returned. The LPC Coordinator (a Maoist) explained that little land was officially seized; rather, the land was abandoned by IDPs and occupied by Maoists during their absence. No problems were reported for IDPs to return and reclaim their land. A senior UML representative agreed and said that there were few cases of Maoist seizure of private land. He noted that some public cardamom farms were seized but have been returned. A member of another party thought that a small percentage of seized private land was still in Maoist control but could not give specific examples.