

JSRP Paper 12a – *Background Paper*

LAND DISPUTES AND SETTLEMENT MECHANISMS IN NEPAL'S TERAI

Danielle Stein (LSE)

**Bert Suykens (Conflict Research Group, Ghent
University)**

March 2014

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The Editor, Justice and Security Research Programme, International Development
Department, LSE, Houghton Street, London WC2A 2AE
Or by email to: Intdev.jsrp@lse.ac.uk

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Danielle Stein (Justice and Security Research Programme, LSE)
Bert Suykens (Conflict Research Group, University of Ghent)

Introduction

Land has long been among the most politically contentious issues in Nepal. This stems from historical patterns of land tenure which, by concentrating land ownership the wealthy and those close to the monarchy, were the primary channels through which authority was established and expressed.¹ Though these patterns have evolved over time, access to land remains a key determinant of both social and economic status for rural Nepalis.²

An examination of land relations in Nepal is a useful lens through which to explore complex patterns of local governance and authority.³ Indeed, since the 1960s land reform has been an important area of contestation between political parties. From 1996 and 2006, these issues were also central Nepal's civil conflict, as Maoists targeted large landowners as a symbol Nepal's exclusionary, patronage-based state. Now in the post-conflict period, land reform remains contentious, attracting attention from politicians, academics, NGOs and advocacy organizations.⁴

The economic and political importance of land in Nepal also makes it a key consideration for justice and conflict resolution. In this realm, 'access to justice' programming has become a cornerstone of many international development initiatives in Nepal, many of which include a community mediation component. Though community mediation models differ by implementing organization, these programs broadly aim to increase access to justice with locally accessible, free dispute resolution services. Though the Nepal's Local Self Government Act (1999) legally permits mediation to resolve civil disputes, land-related cases are often cited as the most common subject of dispute brought to community mediation. Despite this, little research has documented the specific land disputes occurring in villages across Nepal and how people attempt to resolve them.

The Asia Foundation (TAF) has been implementing community mediation since 2003 and now has mediation programs in 104 Village Development Committees (VDCs)⁵ and ten municipalities across Nepal. In TAF's Fall 2012 project reporting, 26% of cases brought to mediation were officially classified as land disputes. However, this figure may more realistically reach 45%, when combined with inheritance and irrigation disputes which tend

¹ Sikor and Lund (2009); Regmi (1968)

² Upreti, B. (2004). "Resource Conflicts and Conflict Resolution in Nepal." *Mountain Research and Development*, 24(1): 60-66. Adhikari C, Chatfield P. 2008. The Role of Land Reform in Reducing Poverty across Nepal. Paper presented at Third Annual Himalayan Policy Research Conference, Nepal Study Centre in Madison, 16 October.

³ Forbes, A. (1999). "Mapping Power: Disrupting Claims to Kipat Land in northeastern Nepal." *American Ethnologist* 26(1): 114-138.

⁴ For example, see Adhikari (2008) for ActionAid's research and advocacy on land reform.

⁵ Each of Nepal's 75 districts are divided into VDCs, or sub-district level administrative areas. VDCs are further divided into nine wards, which are the smallest unit of official administrative division in Nepal.

to concern land.⁶ Closer examination of trends and issues related to land disputes will be essential as TAF and other organizations expand community mediation and seek to learn about the justice needs of many in Nepal. This report will support this aim first highlighting the most common types of land disputes brought to mediation and relaying local perspectives on their causes and consequences. Following this, this report outlines complex village-level justice landscape available to disputing parties. Boxed case descriptions illustrate the dynamics of many land disputes and the difficulties many individuals have in settling them. The report then concludes with reflections on mediation's role in resolving land disputes along with practical recommendations for improving this aspect of the program.

Methodology

Primary research for this report was conducted in nine VDCs across Dhanusha, Sarlahi and Nawalparasi districts in the Terai. These districts were selected on the basis of TAF 2012 reporting, which found them to have the most land disputes brought to community mediation. In each district, mediation coordinators were asked to provide the names of the five VDCs with the most land disputes. From these two VDCs per district with TAF-supported mediation programmes were selected, with one being more developed and one comparatively less developed.⁷ An additional VDC in each district was selected that did not have a donor-supported mediation program. These untreated VDCs were randomly selected from the range of VDCs that fell within the radius of the furthest treated VDC from district municipality. These untreated locations provide a point of comparison with treated sites and are intended to provide some insight into broader disputes trends rather than to assess the impact of mediation specifically.

This study is based on discussions with 382 respondents. Respondents were found based on a combination of purposeful, random and snowball sampling, and included members of local and district implementing staff, mediators, disputants and VDC secretaries. Additionally, social workers and individuals involved in local politics were targeted using a snowball strategy. This study also benefits from data collected during previous research in the same districts from August to November 2012.⁸ This data provided basic information about community mediation, overall social and dispute profiles of different areas and further aided in site selection.

This study has a few limitations. First, the nine focus VDCs in this study were selected to represent varying levels of exposure to mediation as well as differing circumstances facing communities in the Terai. Though this approach allowed the research team to deeply explore each VDC, this relatively small number of sites may limit the extent to which the findings of this study can be generalized across the Terai. Similarly, though many similarities exist between the Hills and the Terai, land holding patterns, population movements and political

⁶ TAF Quarterly Project Reporting. When combined with irrigation, road and crop-related disputes, this proportion reaches 33 per cent. If half of the reported transaction cases were also related to land, this total would equal 40 per cent. Inheritance disputes are also commonly about land, but classified as family disputes. If one third of inheritance cases are counted as land disputes, this proportion may equal 45 percent.

⁷ This determination was made by local partner staff. More 'developed' areas were often located directly on the main highway, had more market links and better services. They often consisted of an 'urbanized' centre on the highway with surrounding wards. Less 'developed' sites often were off the main highway with few services and little market or other economic activity. Even if located on a highway, the 'urbanized' centre was absent.

⁸ See Stein (2013)

activity also vary greatly between these areas, limiting the extent to which the findings of this study should be generalized to the Hill regions. Additionally, it is particularly difficult to know if this study is an accurate representation of *violent* land disputes. Though violence was not a particular research focus, it was nevertheless a recurring theme in many interviews. Most respondents did note that land disputes sometimes became violent. However, all were generally hesitant to further detail these and other security-related issues. More long-term ethnographic field research could help to overcome these silences.

Justice Needs: Typology of Land Disputes

This section highlights some land disputes most common in the Terai. Across research sites, land was repeatedly described as a highly contentious topic, with a number of respondents noting the Nepali adage, ‘*where there is L (land), there is C (conflict).*’ In addition to community mediation services, land disputes are also commonly brought to local leaders, police and courts. As such, beginning from the dispute as opposed to the resolution mechanism will shed light on disputes that are not brought to mediation or reflected in mediation reporting. This section provides explanations of these various types of disputes, along with boxes detailing a specific example case for each type of dispute.

Boundary Disputes

Disputes related to boundaries or *aalis* separating fields were common in all research areas. Often, these disputes occur when an individual mistakenly plows onto a neighbors land by hand, card or tractor. Though this is often in advertent, discussions often emerge as to the motives behind this action. Locations with crops planted close together may specifically precipitate this type of dispute as sugar cane, as it is difficult to know where one field starts and another ends.

Respondents also noted a number of boundary disputes occurring when individuals attempt to enlarge their own plots. This is generally a slow process, with individuals slowly plowing the edge of their property or incrementally planting at the edge of their neighbors land. In many places, nails are placed in the ground to identify property boundaries but respondents note that it is common for one neighbor to move the nail boundary at night so as to enlarge their own property. Another common strategy (and source of dispute) involves planting fruit-bearing trees on the boundary, from which basis the farmer then claims the land underneath the canopy under the tree.⁹

Box 3.1¹⁰

Amit’s dispute started three months ago. There used to be a nail that identified the boundary between his land and the land of his neighbor, but this disappeared. After the nail disappeared, the neighbors started to trespass on Amit’s land. Although Amit confronted the neighbors to resolve this issue, the neighbors had four sons and thus wanted instead to resolve the dispute with a physical fight. Amit preferred to find four

⁹ Research interaction #226 – in order to maintain anonymity of respondents, interviews and focus groups have been grouped and assigned a random identification number for the purposes of this publication. All numbers in subsequent footnotes further reference such research interactions.

¹⁰ 154

respected people to help to talk it out. His uncle, who was a Nepali Congress politician and a mediator told him about community mediation. Amit put a notice of his dispute with the mediation committee and chose his uncle as his mediator. The neighbors also selected their own mediators, in addition to the local elders that were present. Amit's neighbors were reluctant to settle at first, but they agreed that the elders who knew the boundary would come and identify it. This was done and now Amit's case is resolved.

Many respondents also note that *encroachment* is a common form of dispute. This often occurs when one disputant builds a structure very near to or on the boundary line separating his property from his neighbor's. Often this structure may damage the neighbor's property or reduce its value and result in significant damage that is beyond the capacity of most people to repay.

Box 3.2¹¹

Muhammad donated his land to a social organization so they could construct a religious building. One of the neighbors has built a house over the boundary line, partly on the land Muhammad donated. His neighbor is a *badmash* (scoundrel) and powerful at the moment. He has connections to politically powerful people, so it might get violent. The appropriate time will come and he can reclaim the land. He will first go through the local group of elders to try to get justice. If that doesn't work he will try to go through mediation and has already contacted the mediation coordinator about this. But, as there is a lot of political factionalism at the moment, the coordinator has advised him to wait to resolve the dispute. So he is still waiting for the appropriate time to challenge his neighbor.

Another type of boundary dispute is related to land measurement. Land is generally measured by professional *amins* (surveyors). This process can be contentious, as it can invalidate historically agreed upon boundaries or measurements made using a different measurement system such as 'hands' or using rope.¹² Though *amins* are respected people with a tremendous amount of authority, some respondents note that some private *amins* accept bribes in exchange for giving measurements that favor one disputing party over another.¹³ This practice, many respondents note, means that disputes tend to intensify when private *amins* are involved.¹⁴ Despite these problems, respondents noted that many people prefer private *amins*, as they are significantly faster and cheaper than *amins* employed by the government.¹⁵

Ownership Disputes

Respondents note that disputes are also often related to ownership of entire plots of land, rather than to specific boundaries. The frequency of such disputes varies greatly by location: either there are very few such disputes in a given area, or the ownership of a high proportion of plots is hotly contested. This observation may be related to the historical patterns of how,

¹¹ #103

¹² #74, #65

¹³ #73, #129

¹⁴ #73

¹⁵ #141

when, and by whom, the land was settled and registered, as well as the education levels of its settlers.

Respondents noted that many ownership disputes stem from the failure to register land and land transactions. This observation is consistent with previous studies that find ‘up to half of Nepal’s landholders have no legal entitlement to their land.’¹⁶ In such cases, families have often been living on, or plowing, a plot for many years without having registration papers proving their ownership, or without checking the accuracy of the papers on file. Many of these individuals attribute this to a lack of knowledge of land registration and of the seemingly complicated process. This is understandable as historically land ownership was agreed orally between neighbors. This scenario may also occur when an individual has recently bought a plot of land but either fails to register it or receives false registration papers. Though neighbors will be able to confirm that a family has been plowing a given plot, this is often not enough proof to resolve such issues, which often lead to an intractable dispute.

Box 3.3¹⁷

Mohar’s family has always used their land for farming, and has passed it down from father to son since his grandfather acquired it. Recently, someone bought the neighboring plot, but soon after the purchase also tried to claim that he owned part of Mohar’s land as well. The buyer claims that the person he bought his land from also sold him part of Mohar’s land, but Mohar never agreed, but does not have any paperwork showing the boundaries of his land to use in his defense. Mohar came to the VDC to settle the dispute. After mediation, Mohar sold 5 *khatta* of his land to his new neighbor.

These scenarios create a number of opportunities for those with unregistered land to be exploited by those with better education or knowledge of the law. Some respondents note that landlords and powerful individuals in the community use disputes as a way to evict poor families.¹⁸ In such cases, a landlord may preemptively register another family’s land in their own name and then pick a fight. Once the dispute starts, the landlords will already legally own the family’s property and force the family to vacate it. In other cases, the land may be registered but the property owners may lack the resources, connections, or knowledge to fight the case against a landlord. As such, they may ultimately be forced to give up a portion of their property to their aggressors.

Box 3.4¹⁹

Bonshi had land in ward nine. When the government land survey was conducted, a landlord from that ward was able to register his son as the owner of that land instead of Bonshi. He has been trying to solve this case for the last one and a half years and has spent about 1.5 lakh (approx. US\$1,510) in travel, fees and bribes. First he registered the case with the police. But as the landlord’s son to whom the land had been registered was abroad, Bonshi had to wait until he returned. The son did not want to fight over the land but his father put pressure on him. Eventually the police decided the land should be given to Bonshi, but the landlord warned Bonshi they would come after him if he

¹⁶ Wily, L.A. (2008). *Land Reform in Nepal: Where is it Coming From and Where is it Going?* The Findings of A Scoping Study, DFID Nepal. Available at http://www.landcoalition.org/sites/default/files/publication/797/nepal_law_book.pdf, p. 72

¹⁷ #275

¹⁸ #76

¹⁹ #141

ever tried to take it back. Now Bonshi decided to commit to fighting his case: he visited the land revenue office and land registration office first and then filed his case in community mediation. However, the mediators told him that nothing could be done now that his land was registered to someone else. He suspects that this is because the mediation committee knows how powerful the landlord is in the community and the threats he'd made to Bonshi – fearing they may face the same threats in the future.

Furthermore, some respondents note that when the jungle was cleared and land first settled many decades ago, the powerful people in the community secured papers for all plots in the village. Despite owning the land, many landlords allowed others to plow the plots, leading many to believe that the land was theirs.²⁰ In some cases, these landlords sold the plots but failed to transfer the ownership to the buyer, creating a protracted dispute. At other times, land owners will sell their plots without informing the families occupying them. Though these actions are illegal, in many cases land still has dual owners: one who is plowing it and one who owns it legally.²¹

Box 3.5²²

Kiran bought land from Mangal in the late 1970s. The transaction was conducted verbally and no legal papers were made. Kiran decided to sell this land to Abhik in 2007, and asked Mangal to prepare paperwork. Mangal agreed and the deal was made, but Mangal delayed preparing the paperwork. Abhik agreed to pay 2/5 of the price of the land up front and to pay the rest once the legal papers were finally delivered. Five years later, Abhik came to Kiran to demand the paperwork, after which Kiran went again to Mangal to ask to him to prepare the papers. However, by this time Mangal's son had also claimed ownership over the land. Mangal asked Kiran to settle this matter with his son, but his son refused, arguing that Kiran forced Mangal to sell his land. They tried to settle the issue by proposing that Mangal pay Abhik the same fee that he paid to Kiran when he bought the land, leaving Mangal's family to control the land. However, Abhik refused this deal as the value of the land had risen significantly since he first sold the land. Kiran wanted to settle the dispute, but he knew he could not go to court as Mangal had the legal papers and would win.

At this point, Abhik decided to go to mediation. There, he agreed with Mangal that he would get the land but would have to pay double the amount that Abhik paid to Kiran. Everybody seemed to agree on the deal, notwithstanding the relatively low price at which Mangal would get the control over the land back. Unfortunately, at the time of the interview no money had been transferred despite the agreement made in mediation.

Inheritance disputes

Inheritance disputes, particularly between brothers, are almost invariably about land and division of existing property. Such disputes are often complicated by the presence of a house or valuable trees or crops on the land, as well as differing claims between siblings as to who gave their deceased parents the most care.²³ Other factors further complicate inheritance

²⁰ #76

²¹ #67

²² #68

²³ #127

cases, including oral agreements over boundaries, or land ownership made by the deceased's relatives or other parties.

Box 3.6

Sukhdev's uncle bought 1 bigha²⁴, 11 katha²⁵ of land for NR 1600 (US\$16) many years ago. Later Sukhdev's father bought the land from his brother for NR 1800 (US\$18). At that time no legal papers were made. After some years his uncle migrated to Udaypur (a hill district) along with his family. Now both Sukhdev's father and uncle have died. Sukhdev wants to sell the land, so he requested his nephew (the son of his uncle) to come and make the transaction legal. However despite Sukdev's many pleas and offers to pay the transit and lodging costs, his nephew still refuses to come. Sukhdev feels he cannot do anything as he does not have papers for the transaction. He decides he must wait for his nephew to have a change of heart and must remain on the land until then.

Mohi Lands

Like inheritance disputes, disputes related to *mohis* or tenant farmers, arise due to lack of documentation and poor understanding of legal entitlements. These arrangements can be traced back to a period where land was given to the nobility and members of the civil and military service, and was then cultivated by peasant tenants known as *mohis*.²⁶ Since that time, these tenants have been subjugated to their landlords, with *mohi*-status passed down from generation to generation. Most *mohis* interviewed for this study continue to fully depend on their land for subsistence.

The laws governing *mohi* arrangements were not well understood by the *mohis* interviewed for this study. After plowing their lands for years, many *mohis* believed they were entitled to own a certain proportion of the land. At minimum, *mohis* who have plowed for at least one season are only entitled to half its crop yields.²⁷ Confusion regarding *mohi* land ownership and crop division has created many land disputes, with multiple *mohis* often making claims against the same landlord for the parcel of land. In these cases, *mohis* often have difficulty proving their tenancy due to a lack of documentation and thus are not able to claim their share of crops. However, even when tenants are able to demonstrate their right to the land, respondents note that landlords are often unwilling to part with their land, and use their considerable resources to sway the decisions of courts against their tenants.²⁸

Box 3.7

Kumar is a *mohi* and he plows two *bigha* of his landlord's land. As his landlord is preparing to sell the land, Kumar is having a dispute with his landlord about how to divide the money from the sale of the land. The landlord claims that he has transferred ownership of the land to the village temple and thus does not owe Kumar anything. Kumar is not sure if this is true, but he continues to plow the land and to give a share of the production to the owner. He claims that all the local people support his case, but as

²⁴ Bigha is a unit used to measure land area. One bigha is equivalent to 6,772 m².

²⁵ Katha is a unit used to measure land area. One katha is equivalent to 338 m².

²⁶ Regmi (1971). These were primarily on Jagir and Birta lands.

²⁷ *Nepal Land Act*. Amendment V. Nepal Law Commission; correspondence with The Asia Foundation staff

²⁸ #256

the owner lives in a neighboring village, this does not impress him. He has tried to resolve the case through discussions with the village elders, but they refuse to get involved. At this point, Kumar is thinking of going to the district court to try to resolve the dispute.

Public lands

Many disputes also occur as a result of the complicated status of **public land**, land used for charitable purposes (*guthi* land) and land used for development activities (*sarkari* land).²⁹ *Guthi* lands often house temples or other holy sites, and are highly concentrated in areas like Janakpur in Dhanusha district, which was one site of this study. Though it is meant to be in the public domain, the use of such land is often not monitored, leaving it open to ‘squatters’ to cultivate. These ‘squatters’ do not formally own a particular plot and thus often fight over the right to cultivate the undemarcated land. These lands are also administered by public officials – as such, brokers are reportedly able to buy these lands for the price of a bribe, then sell them at an even higher profit.³⁰ Respondents noted that disputes regarding public and *guthi* land are particularly complex as they involve multiple disputants and are often exploited by political parties with an interest in securing these symbolic properties.

Additional land-related disputes

In addition, **irrigation disputes** were also prominent in research areas. This is due primarily to the fact that a number of canals have multiple entry and exit points for water. This allows for many opportunities for residents to divert water, which may cause a dispute.³¹

Adhiya arrangements were also commonly identified as a cause of disputes. *Adhiya* is a form of sharecropping,³² which requires a tenant to share a portion of the crop, seeds, fertilizers and other raw inputs with the landlord. Though it is customary for the landlord to share fifty per cent of the crop with the tenant, the exact proportions depend on the specific agreement between the two parties.³³ *Adhiya* arrangements vary across the Terai, though for this study they were more commonly reported in the Central than in the Eastern Terai. In Nawalparasi, a number of respondents highlighted *adhiya* disputes concerning the amount of crops they were required to give to their landlord. Many respondents were concerned that their landlords may be asking them to give a larger proportion of their crop than was required, though felt that they had no way to verify this or hold their landlords to account.

²⁹ Acharaya (2008). Dhanusha district, one location of this research, is known to have a particularly high number of *guthi* lands,

³⁰ In May 2013 the Commission for the Investigation of Abuse of Authority issued a statement to government officials imploring them to observe a code of conduct when dealing with public land, targeting specifically dealings with brokers and members of the ‘land mafia.’ See (2013) “Land Mafia in CIAA Chief’s Crosshairs.” *The Himalaya Times* [Kathmandu] 10 May, available at <http://www.thehimalayantimes.com/fullNews.php?headline=Land+mafia+in+CIAA+chief's+crosshairs+&NewsID=375973>.

³¹ #84, #85, #93

³² Dhakal (2011)

³³ Correspondence with the Asia Foundation Nepal, July 2013

It should be noted that respondents rarely mentioned disputes related to *community forests or users groups*. This is noteworthy since this has been a significant area of scholarly inquiry in Nepal over the past decades. In the Terai, many of the forests have been cleared, eliminating this potential source of disputes from many communities. In others, community forest user groups often have their own internal mechanisms for resolving disputes that may contain or reduce these disputes over time. This is consistent with mediation reporting, which finds only two disputes related to community forests were brought to mediation in the Fall 2012 reporting period.

Structural Causes of Disputes

The above discussion has highlighted many of the most common land disputes identified in interviews. Based on this information, this section recounts the numerous and often inter-related factors that respondents identified as underlying causes of these land disputes. Broadly, respondents attributed the large number of land disputes in research areas to four primary factors: changes in population, increasing land prices, changes in education level and the work of *dalals* (brokers).

Population Changes

The population of the Terai has grown steadily in the last decades. This growth was jump-started by the eradication of malaria in the Terai in the 1950s and by policies designed to incentivise migration from Nepal's hills. Many respondents noted that this continuous population growth has led to, and exacerbated, many disputes, as people are living closer and closer together and the average plot size is shrinking.

These dynamics combined with internal migration between different communities in the Terai and the large number of men going abroad for work seems to have reduced the depth of local institutional memory. In the past, it was common for individuals to spend their entire lives in one village. Certain people could therefore be counted on to know the intricacies of oral agreements and were often called upon to determine property boundaries. The absence of this local knowledge is often the cause of disputes since fewer neighbors know who owns what land and the conditions under which they acquired it. Residents note that a lack of knowledge of land holding patterns and practices causes disputes to erupt and often makes these disputes harder to resolve.

Finally, migration to and within the Terai has brought new ethnic, religious and caste groups to communities in this area. Madhesi communities alone are often very diverse, but this diversity has been compounded by the addition of ethnic groups from Nepal's hill regions. Though some mixed communities covered in this research have been living harmoniously, others are plagued by inter-ethnic tension, which often underlies many civil and criminal disputes. Respondents noted that many disputes driven by these tensions manifest themselves in land disputes over seemingly minor boundary, encroachment or ownership issues.

Land Prices

Population growth has also contributed to rising land prices, which many respondents cite as the cause of many land disputes. Though data does not exist to show the exact growth in prices, respondents universally agreed that land prices are now significantly higher than even five years prior, often citing a five-fold price increase over this period.³⁴ Prices of plots in close proximity to district headquarters, towns and the highway have increased the most, though the value of plots close to the Nepal-India border also rose dramatically. These findings are a departure from previous studies, which characterize Nepal's property market as underdeveloped and property as transferred largely through inheritance.³⁵

Beyond the growing Terai population, respondents attributed the growth of the Terai property market to a number of factors. For example, increasing interest from investors in Kathmandu and other cities has increased demand for land in the Terai and raised its market price significantly. As land in the Terai is cheaper than an equivalent plot across the border in India, many noted that Indian families buy property in the Terai and are willing to pay at, or above, market rates.³⁶ In addition, as only Nepali citizens are permitted to buy property, the wave of Terai residents who received citizenship after the 2006 People's Movement brought many new buyers into the property market.³⁷ Finally, remittances sent from those working abroad have significantly improved the economic condition of many families in the Terai. Though these remittances themselves may go on basic expenditure, respondents argue that this financial injection into many communities has a net effect of increasing demand for land as well as many families' willingness to pay for it.³⁸

In addition to the expansion of the property market, economic development taking place across the Terai has also made land in this area more attractive. Specifically, the expansion of paved roads and highways in the Terai has likely been the most significant factor in increasing land values in this area. These expanded roads support overall development in the area, which has made even remote villages attractive to property speculators from Kathmandu. Operating as both individuals and companies, these speculators reportedly buy large plots of land, then divide them and resell smaller plots at a higher profit margin. This has increased the price of land, even in less agriculturally productive areas.

Respondents noted that rising land values seem to have reshaped how many individuals think about land and land ownership in the Terai. Historically, land has been a primary source of livelihood for many but was not previously thought of as a monetary asset. For this reason, many farmers did not feel compelled to have their plots measured or boundaries documented

³⁴ #30, #79, #109, #161, #149, #173

³⁵ CBS, DFID, The World Bank and ADB (2006)

³⁶ It should be noted that Nepali citizenship is a requirement for purchasing land. Respondents noted that they often bought land using a relative's papers or paid for a Nepali citizen to conduct the transaction for them. Other Indian respondents also noted that they had bribed Nepali officials to gain access to the Nepali property market.

³⁷ #173

³⁸ #219. Remittances have come to constitute an important part of Nepal's national economies, as well as the local economies of many areas of the Terai. In 2000 Nepal's remittance to GDP ratio was 2%, but by 2010 had grown to 22%. See Kharel, P. (2011). "Remittances as Development Resource: the Experience of Nepal." Presented at UNESCAP Asia-Pacific Regional Meeting on Implementing the Istanbul Programme of Action, Bangkok Available at http://cpd.org.bd/LDCIV_EGM/Remittance_Development_Resource_Paras_Khare.pdf

and registered. Now that land prices have risen dramatically, respondents described a new interest in knowing the exact size of their property and in securing as much land as possible. As one respondent noted, ‘these people have been living there for generations. They were not very well aware about land registration and allocation, but now that the road has gone through, people are starting to fight over inches and inches of land.’³⁹ These dynamics have created more tensions and led to more disputes but have also made it very difficult for the poorest farmers to acquire land or to expand their existing holdings.

Education and Awareness

In addition to rising prices, respondents consistently cited a lack of education and ‘awareness’ in their communities as a cause of many disputes. Many respondents described their own villages and communities as ‘backwards’ and characterized other people as easily swayed and unable to handle disputes rationally. This, many argue, explains why disputes arise in the first place as well as why they escalate, even over relatively minor issues. Respondents often spoke of such lack of awareness, in conjunction with high levels of unemployment in the Terai, which creates opportunities for disputes to begin and grow.

Contradicting these observations, other respondents actually identified rising levels of education as a driver of land disputes. Increasing levels of education, they argued, made people more aware of the potential legal options for claiming property, whether they were entitled to it or not. Respondents noted that concurrent with the decline in local knowledge, the younger generation puts more emphasis on blueprints and papers than on oral agreements or traditions. As a result, many respondents mentioned that education had made previously informal land transfers open to contestation by the younger generation, resulting in land disputes.⁴⁰

Box 4.1

Bijay is a shop-owner. About twenty years ago his parents bought a large plot of land in ward five and have plowed it ever since. Mangal was planning to build a house on the land, so he started to measure it. He checked the blueprints and they showed that their plot should actually be shifted to the east. He also realized that his neighbor had already built a house on a corner of what he now knew to be his land. This started the dispute. Bijay and his neighbor came to mediation and brought two *amins* to measure the land. After they measured all the boundaries, it became clear that his neighbor had made an error, and he agreed to move the house. Despite reaching this agreement, Bijay is still waiting for his neighbor to move his house. His neighbor claims he is waiting for an auspicious month to start the work, so Bijay is still waiting.

Dalals

Respondents across many areas noted that the role of *dalals* (brokers) in disputes in their communities contributed to land disputes. In some places, *dalals* function as brokers who reportedly convince poor, less educated families to sell their land for less than it is worth. These brokers then re-sell the land for the market price and keep a portion of the profit. A few people admitted that these *dalals* were working with the support of political parties, and

³⁹ #216

⁴⁰ #109, #115, #117

speculated that some of the parties also took a share of this profit in exchange for backing up the *dalals* with connection and physical force if necessary. These interactions often lead to disputes, but as victims usually have fewer resources they are generally unable to win a case against well-connected *dalals*.

Box 4.2

Parwez has been plowing one *katha* of land for a long time but has not registered it. As he has been using the land for a long time, the people in the village office told him he should make sure to have it registered to himself. However, a neighbor told Parwez that only 5 *dhurs*⁴¹ of the *katha* were his and the rest belonged to his neighbor. The case went to the district court and, after spending large sum of money, Parwez won the case. His neighbor appealed the case and bribed some officials to make sure that Parwez did not receive a notification to appear before the court. Despite this, Parwez still won the case in the appellate division. After this, the other party got the help of a *dalal*, who was known in the community as an alcohol drinker and a criminal. The *dalal* has ignited disputes with Parwez's other neighbors and attempted to turn them all against him, resulting in Parwez's father being beaten. These disputes are now with the mediation committee, but no decision has been reached because his opponent (with the help of the broker) continues to try to turn the community against him. Recently, the *dalal* invited Parwez to a social event, but Parwez did not go, fearing a plot to hurt him. As of now, the case is at a standstill, and Parwez fears that he will not be able to get a fair outcome no matter where he takes the case.

In other areas respondents used the term *dalal* to describe a person who specifically incites a dispute or ignites an existing dispute for monetary and political gain.⁴² These individuals are often reportedly backed by political parties and have connections at the local and district levels of government. Money is often paid to *dalals* directly in exchange for using their purported connections to push a case through the courts. If the *dalals* are able to use their connections to help their 'clients' win cases, the client is expected to support the *dalal* and the party he represents politically. *Dalals* also reportedly seek to elongate and complicate cases to the extent that disputants may give up on their case. Once disputants give up, the *dalal* will often take the land for themselves, or on behalf of their party.

Though not cited specifically in research cites, these *dalals* are likely part of the larger 'land mafia' operating across Nepal. Cases such as those described above have previously appeared in both Nepali and Indian news in direct connection with land mafia groups.⁴³ Driven by economic interest, these groups may also have political motivations, as they may be backed by political parties or be heavily involved with corrupt government officials. As such, public and charitable land has been particularly susceptible to appropriation by these groups.

⁴¹ A *dhur* is a unit of measure for land area. One *dhur* is 6.321 m².

⁴² #106

⁴³ See for example, (2013). "Minister's bid to capture forest land foiled." *The Himalayan Times*. 23 February, available at <http://www.thehimalayantimes.com/fullNews.php?headline=Minister%27s+bid+to+capture+forest+land+foiled&NewsID=367113>; (2010). "Land Mafia harassing NRI." *The Times of India*. 12 March Available at http://articles.timesofindia.indiatimes.com/2010-03-12/ludhiana/28130422_1_land-mafia-property-worth-crores-possession

Dispute settlement mechanisms

There are a number of potential arenas where Nepalis may seek to resolve their disputes. These arrangements can be described using the concept of legal pluralism, which recognizes the existence of multiple legal orders within a social setting.⁴⁴ These can range from formal legal provisions, customary and religious law, as well as local norms and customs (Meinzen-Dick and Pradhan 2002). Moore (1973) notes that in such orders, there are multiple social fields, with actors and norms that generate rules for the given field, as and both influence and are influenced by other fields. In Nepal, these begin at the village (ward, or *tole*) level and stretch to the supreme court in Kathmandu.

Levels of dispute settlement

Community and Village Level

Nearly all respondents noted that it is always preferable to resolve a dispute locally. By 'locally' most Nepalis mean within a village, usually defined as at the ward or at the *tole* (grouping of wards) level.

According to respondents, resolving disputes locally involves calling the respected members of the village together to hear and adjudicate the dispute – often called *bhadbhaladmis* or *bhalomanavs*. Such individuals often include ex-ward and ex-VDC chiefs who were elected in 1997 but whose terms have since expired, as well as elders in the community, social workers and politicians. In some locations a set group of people are always called to resolve disputes, whereas in other places these individuals may be handpicked by the disputant. Often these individuals sit with both disputants in a public area, hear both sides, and decide the case in front of a group of spectators. In this case, there is a clear victim and an oppressor in the dispute, with the oppressor sometimes required to apologise, pay a fine, repair damage done to the victim, or cover any outstanding medical bills.

Village Development Committee (VDC)

At the VDC level, there are two primary options for dispute resolution. The first is through the VDC secretary who, according to the Local Self Government Act, is charged with adjudicating local civil disputes. Often the VDC secretary will make a decision himself but may also refer it to the police or courts. Respondents also note other examples of the VDC Secretary inviting respected individuals in the community to aid in the dispute resolution process.

Secondly, some VDCs also have a community mediation program, including but not limited to those implemented by TAF. To participate, disputants first register their dispute with the VDC secretary, who then refers it to community mediation committees. In VDCs with mediation programs, this referral often comes automatically, as long as the case is deemed appropriate for mediation. The disputants then select their mediators from the 27-member

⁴⁴ Griffiths 1986, Merry 1988, F. and K. von Benda-Beckmann and Spiertz 1996, 1997; Spiertz 2000.

panel of trained mediators, and, along with a third mediator selected by the VDC, have their dispute adjudicated in private. The reasons most often cited for using mediation are its location within the VDC as well as its zero cost.

A third option used to be available in some VDCs when the elected VDC chairman and committee were still in place. At this time, a committee would be formed out of the VDC committee to settle disputes.

Some respondents noted they would seek help in the VDC if their case was not resolved locally. However, many preferred to go straight to the police, who are generally seen as having more power and authority than the options available at the VDC.

Box 5.1: Jan Adalat

The *Jan Adalat* or People's Courts were an additional dispute settlement mechanism that operated during Nepal's conflict period (1996-2006). These mechanisms were established by the then Maoist insurgents as an alternative to formal and traditional justice mechanisms. In interviews, one female former Maoist leader described these venues as "the best way to solve cases," though this simply reflects the views of someone closely associated with the operation of these courts. She explained the process: people who wanted to settle a dispute informed a local Maoist activist, who communicated the request to the local party leadership. Disputants were then brought to the *Jan Adalat*, often based in an isolated location. The disputants would state their case before a crowd of local people, who would then decide which party was right and show their support by physically standing behind that person. Whichever side had the most supporters behind them won the dispute.

In land cases, the *Jan Adalat* tended to give preference to those who plowed the land over those with the legal paperwork. As such, people sometimes attempted to erase paperwork recording land ownership or put the papers in their adversary's name. Some disputants also occasionally brought non-Maoist politicians to witness the proceedings, along with journalists to report on them. These journalists provided some security, since if the proceedings got violent the journalists could later report on it, or potentially deter the violence altogether. Things went wrong when those in charge of the court believed that one disputant was telling a lie, resulting in that disputant being beaten up. After the conflict, the *Jan Adalats* have ceased to exist, which our informant regretted. Despite this, most of her Maoist friends (including herself) once involved in the *Jan Adalats* continue to settle disputes. Unfortunately, she says, many Maoists are now easily swayed by the rich and no longer give justice to the poor.

Nepal Police

The police in Nepal often function as a de-facto arm of the formal justice system. Police are based either in each VDC or in a cluster of VDCs, making them physically accessible to most people living in villages. Though police are not legally permitted to resolve disputes, the police often help community members resolve disputes as part of their larger mandate to keep order and peace in the village. Many of those interviewed for this study also considered the police to be a legitimate place to take a non-violent dispute and noted that they would go to the police if they were unable to resolve their dispute locally. Others noted they would go to the police only if a dispute was not able to be resolved at the VDC, or with the

recommendation of the VDC secretary. For violent disputes, however, respondents nearly universally said they would prefer to go to the police first as they were the only body that could exert force on a violent individual.

Courts

Nepali courts begin at the district headquarters and are followed by sequentially ‘higher’ courts in each of Nepal’s five zones and, ultimately, at the Supreme Court in Kathmandu. Many respondents note that the court would be their last option for dispute resolution, as courts are located far away from most villages and are very expensive. Indeed, a TAF study found that the average district court case cost 1300 Nrs (US\$15),⁴⁵ with Zone and Supreme courts costing even more. Many respondents living outside district headquarters noted that for civil cases they would prefer not to resolve their dispute at all, rather than to take it to even a district court.⁴⁶ This signifies both how expensive and how difficult it can be to navigate the court system, as well as the impression among many Nepali villagers that courts are mainly for the rich.

Selecting Justice Mechanisms

Overall, several factors tend to determine where justice seekers attempt to resolve their disputes. First are practical concerns: cost and location. The majority of Nepalis live in rural areas and thirty per cent of them reportedly earn an average of only 14 US\$ per month.⁴⁷ A visit to court therefore costs the average person both money and time away from tending their fields or other livelihood activities. Thus, for many Nepalis local level justice mechanisms are the only ones they can afford. Given this reality, reducing the cost of justice services and locating them closer to communities are the primary ways that access to justice programs, including those for community mediation, improve the accessibility of justice.

A secondary concern for some Nepalis, particularly those with more financial resources, is which justice outlet they believe will afford them the best outcome. This behavior is consistent with ‘forum shopping,’ in which justice seekers ‘shop’ for the best outcome.⁴⁸ Perceptions regarding which circumstances create the ‘best’ outcome vary, but respondents noted that this is often dependent on a disputant’s ability to fight a case in the formal system, beginning at the district level and going all the way to the Supreme Court in Kathmandu. Rich disputants, they note, are able to continue cases indefinitely, both by bribing decision makers to stall a verdict, referring it to a higher court, or by filing appeals after every decision. Rich disputants who can aggressively fight their cases, respondents argued, are much more likely to win.

⁴⁵ IGD Baseline Report (2003), Dhanusa District. This report was completed in preparation for the establishment of Foundation-supported community mediation programmes in 2004.

⁴⁶ Judges in district courts may also send cases for court-referred mediation. In these cases, disputants may also proceed directly to this form of mediation without first seeing a judge.

⁴⁷ Rural Poverty Portal. *Rural Poverty in Nepal*. available at, <http://www.ruralpovertyportal.org/country/home/tags/nepal>

⁴⁸ Von Benda-Beckmann (1981)

Fears of social stigma also influence where justice seekers take their problems. Many respondents noted that being involved in a dispute is often considered to create perceptions that they are a ‘difficult person in the community.’ This is most common in the case of family-based disputes such as domestic violence, polygamy and divorce, but can also be true for less personal issues such as land and livestock. Seeking justice is similarly stigmatized, with attempts to utilize more formalized justice mechanisms seen as a sign of the severity of the dispute. For example, the least severe disputes, it is assumed, are resolved in the community, and the most severe ones resolved in court. In other South Asian cases, studies find that such stigma may prevent women from seeking to resolve domestic violence and other family issues either outside the home or at all.⁴⁹

Box 5.2⁵⁰

Nandalar’s dispute begins with land owned by his grandfather, which he passed down to his sons, Nandalar’s father and uncle. Nandalar’s uncle managed to register all the land in his own name, despite the fact that Nandalar’s father been working his ‘share’ of this land for many years. His uncle has now claimed all the land as his own and wants Nandalar to vacate his share. This uncle also used to be the VDC chairman and is a relatively educated person, capable of reading well and writing. Nandalar called a village meeting to settle the dispute with his uncle. At the meeting it was decided that Nandalar should get his father’s portion of land, which the uncle agreed to. Afterwards Nandalar went to the registration office alone as his uncle refused to accompany him. There he was told both he and his uncle had to pay NR 50000 (US\$ 50) to arrange the necessary paperwork. As his uncle was not there Nandalar paid for both parties in order to expedite the registration. However, his uncle still refused to give him his share of the land. Since his uncle is powerful, nothing can be done to force him. Following this, Nandalar went to mediation to try to settle this dispute. There, his uncle agreed again to the original terms and signed an agreement one year ago. However, his uncle still refuses to cooperate. Nandalar has asked the mediators multiple times to put pressure on his uncle, but they also refuse. Now he has taken the case to court and is awaiting a trial there.

While many people spoke well of the different dispute settlement options, the extent to which disputants ‘forum shop’ is also partly the result of the non-implementation of many of the decisions reached in various dispute settlement arenas. As the majority of settlements reached in the community and in community mediation are not enforceable by law, the losing party is often able to renege on the terms of their agreement. This is compounded by the fact that the village elders, community mediation and the police may all reach different and sometimes contradictory decisions regarding the same case. This provides an opening for contestation by the more powerful party, which makes decisions less likely to be implemented.

Recommendations for Meeting Justice Needs

Overall, this study suggests that mediation has made an important contribution to resolving land disputes in project locations. Though mediation was often a second choice after first

⁴⁹ Jayasundere and Valters (2014)

⁵⁰ 28

attempting to resolve a case among local leaders, respondents who had used mediation were generally satisfied with their experience. This section provides recommendations for how to further improve the efficacy of mediation on resolving land disputes, and provides insights into how mediation can improve ‘access to justice.’

Mediation’s Legal Status

There are a number of legal and practical factors that prevent mediation from more fully serving those with land related disputes. Most consequential is mediation’s legal status, which does not provide recourse if a disputant fails to implement a decision reached in mediation, other than an additional mediation session. Many respondents also noted that mediation’s inability to compel disputants to attend a mediation session limited its efficacy as a form of dispute resolution. Disputants often want to file cases, but cannot as their co-disputant is either unwilling to attend mediation, has fled to India, or, as is the case of many landlords, lives in Kathmandu. Given that for some people mediation is the only justice mechanism available besides community leaders and elders, its inability to compel disputants to attend limits its effectiveness as a way to increase access to justice.

Mediation as part of a wider dispute settlement arena

Any analysis of community mediation should understand it in the context of the many forms of dispute resolution available at the local level. Proponents of community mediation as a form of alternative dispute resolution often contrast mediation to *formal* dispute modes of dispute resolution, particularly those that are perceived to be dysfunctional or exclusionary.

Though respondents did often frame the formal justice system as exclusionary, it is a mistake to view the formal and the local, or informal, system as separate entities. Rather, many active community members, particularly politicians, act as connections between different justice delivery mechanisms, including mediation and are often part of multiple local justice arenas. For example, the same elder might resolve disputes informally in the ward, serve as a mediator, and be a broker at the court who helps ‘push cases through’ by accepting and distributing bribes. Rather than focusing on the boundaries between these mechanisms, the close linkages between different justice delivery mechanisms should be taken into account when assessing justice needs, accessibility and outcomes. Adopting this view should also provide an opportunity for mediation proponents to think more closely about how mediation relates to other forms of dispute settlement.

Mediator Training

Mediators specifically identified land disputes as among the most difficult to resolve.⁵¹ They attributed this to a number of factors. First, disputants are particularly invested in their position and less likely to compromise. As one mediator noted, ‘land is about a person’s life, their blood and sweat. They don’t want to give it up easily.’⁵² Second, unlike many other kinds of disputes brought to mediation, the fact that at least one disputant often has some documentation supporting his or her land case often affords less space for the negotiation and compromise essential to the mediation process. This is complicated by the multi-generational

⁵¹ #64, #69, #71, #75, #76

⁵² #75

history of verbal agreements governing many pieces of land, particularly when those relatives are no longer present.⁵³ Finally, it is very difficult for mediators, police and elders to enforce decisions related to land, as it is nearly impossible to remove someone from their land if they are not willing to leave. This combination of factors represents a particular challenge for mediators. More training on mediation approaches and techniques to transcend these issues of evidence, interest and livelihood would most likely improve mediators' ability to effectively act on these issues.

A few specific trends highlighted in the cases in previous sections indicate potential training options to help mediators transcend these difficulties. First, many of the most complicated land-related cases involve group-individual or group-group disputes. Mediation training has begun to integrate group resolution skills into its curriculum, but the prominence of these disputes suggests that expanding this would be beneficial.

In addition, mediators also identified a number of specific land-related skills that could help them improve their ability to resolve land disputes. Most common was the request for additional training on land measurement and blueprint reading. Mediators will sometimes involve *amins* in the dispute resolution process, but this can often be expensive and time consuming. Giving mediators the skills to measure land accurately and read property blueprints would allow them to facilitate a cheaper and more efficient resolution. Beyond training, some mediators mentioned the need for clearer guidelines in mediation protocol for resolving land disputes. The question of if, and when, it is appropriate for a mediator to involve an *amin*, to measure the plot themselves, and when to visit the plot of land in question were among these most prominent requests. As with the queries noted above, many of these questions relate to the difficulty of balancing interests, needs and evidence within the mediation process.

Public Awareness

Improving public awareness of many land-related practices may also be useful in preventing future land disputes. Many respondents noted that land issues, particularly those related to ownership, grew out of a lack of understanding of the legal process related to buying, selling and registering property. The poor and less educated in particular often do not know the importance of registering their land, or if they do, are not able to complete the process themselves due to high fees, illiteracy, or distance from the district headquarters. These factors often lead to disputes themselves, or further complicate existing ones.

A lack of clarity on the part of the general population regarding *mohi* and *adhiya* arrangements has also led to many disputes. This is related to the specific rights afforded to individuals working under these arrangements, regarding the necessary time period of tenancy, the nature of tenancy and the proportion of crops due to landlords. Though this generally requires at least one year of tenancy before crops are shared and specific agreements made related to ownership, these arrangements tend to vary widely across the country. Many respondents also noted that they did not fully understand how to claim these rights and benefits, particularly if they are entitled to land through a *mohi* arrangement. Given this broader lack of understanding, public awareness campaigns may be useful in preventing land disputes and the abuse of land and property rights.

⁵³ #118

Lastly, in many research locations there seemed to be a lack of understanding about the community mediation program and process. In some areas, people were often unaware of the existence of community mediation, particularly in wards far from the VDC office. As such, educating community members regarding the existence and services offered by mediation beyond the initial implementation period would also improve the effectiveness of the program.

Conclusion

Land holds significant economic and political importance in Nepal. With land disputes comprising a significant proportion of cases brought to community mediation, this study has mapped the most common kinds of disputes plaguing communities in the Terai. It has shown that these primarily include disputes related to boundaries, ownership, encroachment, *mohi* and *adhiya* arrangements and public land. This study finds that dispute-affected populations understand changes in population, rising land prices and education and awareness, and the work of *dalals* as the primary drivers of land disputes. This study finds that improving mediator training and public awareness of land registration processes would reduce land disputes and support easier resolution of those currently occurring. For those involved, land disputes have very significant implications, with the potential to harm their livelihoods and render disputants landless. Given such high stakes, this study hopes to help community mediation programming to improve the resolution of land-related disputes and, in so doing, to better serve the communities in Nepal most in need of this service.

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This publication is an output of a research programme funded by UK aid from the UK Government. However, the views expressed do not necessarily reflect the UK Government's official policies



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Contact details:

email: Intdev.jsrp@lse.ac.uk

Web: lse.ac.uk/internationalDevelopment/research/JSRP/jsrp.aspx

Tel: +44 (0)20 7849 4631