

Working paper on Ethnicity and its impact on eminent domain issues in Nepal*

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1 Introduction

The right of the state to appropriate land for public use as a topic has been explored fairly in literature. While there are still contentions as to what might be considered as public use and the general criteria that a government must follow for expropriation, the state's right of acquisition as a limit to the fundamental right of private property is not debated. There is also extensive literature on resistance to land appropriation and the mechanisms of such resistance. Following the work of Scott (1977), notable contributions within this strand of academic literature are O'Brien (1996), Guo (2001), O'Brien and Li (2006), Banerjee (2006), Levien (2013a), Levien (2013b), Levien (2015), Kenney-Lazar et al. (2018). Scholars have primarily focused on mechanisms of resistance that involve informal mechanisms and informal institutions i.e. groups resisting land appropriation through use of varying tactics such as protests(see for instance Banerjee (2006), O'Brien (2013), Levien (2013a)). Additionally, literature has also extensively focused on rural settings where land appropriation has the distinctive quality of being an act of an all-powerful state acting against the will of the landowners and the resulting resistance through informal mechanisms, an attempt to protect primary resources of subsistence(see for instance, Guo (2001), Kenney-Lazar et al. (2018)).

Our attempt here differs from the existing literature in one fundamental aspect i.e. we do not attempt to explain the Nepalese scenario of informal resistance. Rather we attempt to exploit publicly available data to explore formal channels of resistance and the effect of group homogeneity on formal channels of resistance. Our attempt here is therefore related to the strand of literature devoted to rightful resistance i.e. the use of the state's laws and rhetoric to challenge decisions of the state. As was the case with informal mechanisms of resistance, the literature on rightful resistance also focuses on rural settings

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for precisely the same reason. Following the work of Scott (1977) and O'Brien (1996) rightful resistance for land appropriations by the state has been studied sparsely. Our attempt here is therefore a contribution to a strand of academic literature that lacks sufficient knowledge. In addition to this, we also attempt to analyse how homogeneity within a group affects the chances of successful rightful resistance. While the effects of group behaviour on rightful resistance have been studied, our definition of groups differs from the existing literature in terms of our strict focus on ethnicity as the main factor leading to group formation. Previous attempts in literature have only focused on geography as the driving force in group formation. In the sections to follow, we lay out Nepal's formal mechanisms of resistance to land appropriation and our data collection and analysis strategy before presenting the results.

2 The Nepalese Context

Our focus on Private Property, more specifically land as a mechanism to study resistance and the effects of resistance finds its justification in the history of land rights and its strong linkages with income. Nepal is predominantly an agrarian economy, to that end, income is strongly correlated with ownership of lands. Yet it is not the strong linkages between land and income that guides our focus on examining resistance, but rather Nepal's movement for land rights, resistance to land reform and the interplay between land tenures and Nepal's ethnic communities.

Historically, Nepal's land tenure system involves a mixture of elite-state nexus and the use of land as payment mechanism. Earlier works (see for instance, (Joshi & Mason, 2007; Regmi, 1976; Sharma & Khanal, 2010)) document the use of land for consolidation of power, maintenance of strategic relationships and as payments to government servants & soldiers. Land tenure system in Nepal is complicated and involves several categories of land and by extension land rights¹

¹The entirety of the land tenure system is not of primary interest to us. In general Nepal's land tenure system involves several categories of land, each characterised by differentiating rights and tax liabilities i. Raikar was a form of state land-lordism, where the land was retained under state's ownership and the state may levied tax on private individuals who operated it. (Regmi, 1976) notes that the nomenclature of the word implies a land where the state levies taxes on and this form of land-lordism is an ancient Hindu institution sanctified both by law as well as tradition. The cultivators of Raikar land enjoyed ownership and had full right in terms of selling, using, inheriting, transferring, dividing and leasing the land. Taxes were collected by various unofficial functionaries called talukdars, jimawals and mukhiyas (Koirala, 1987). ii. Birta is a form of land granted to individuals to enable them to make a living. It emerged from the state's decision to give ownership to private individuals on the basis of patronage or reward for loyal service (Koirala, 1987). It is unclear whether Birta land involved ownership rights or possessory rights (Koirala, 1987; Regmi, 1976), additionally, when grants were made to charitable organisations or organisations in general they were termed as Guthi Land. iii. Jagir lands were merely an assignment of Raikar land to civil and military employees as salary or fees in exchange of their service to the country (Regmi, 1976). The term 'jagir' literally means job and jagir lands were to that extent not ownership over a particular land but rather ownership of any crops till the period of employment to be divided equally

The evolution of Nepal's land tenure system is also the evolution of institutions in Nepal and a direct result of regime change. More important, however, is the resistance to changes in land tenure system throughout Nepal's history (Karki, 2002; Nepal et al., 2020). Previously, resistance to changes in Nepal's land tenure system have been informal (Caplan, 1967; Cox, 1990). Resistance in the context of land tenure system in Nepal also plays out in two phases. The first phase i.e. pre 1950s is characterised by resistance to government issued regulations on the subject matter of taxation and inheritance rights (Acharya, 2002; Caplan, 1967; Karki, 2002). Resistance post 1950s is characterised by both sporadic and organised movements by peasants. Their primary demands were land rights for tillers, abolition of prior forms of land tenure system most notably the Birta Tenure, distribution of land held by feudal lords and return of land appropriated by feudal lord on the basis of bondage papers (Cox, 1990; Sharma & Khanal, 2010). The distinctiveness of two phases is merely the resisting population. Whereas pre-1950s the ruling elites most notably Birta, Kipat and other land form owners resisted efforts made by the state to make changes to ownership structure, the resistance post 1950s are attempts at dismantling structures that give rise to unequal distribution of land and of land rights. The resistance in the post 1950s period is therefore a resistance against both the state and owners of the land in so far as the assignment of ownership is concerned was either arbitrary or based on closeness with the then government structures. The sporadic and organised attempts at resistance post 1950s should not be surprising, since this was also the time when Nepal's democratic movements started.

Resistance from ethnic communities is also a notable feature of Nepal's land tenure system. Land grants from the state were predominantly made to Shahs, Thakuris, Brahmins, Kshetriyas, Rana and Newars (Dhakal, 2011; Joshi & Mason, 2007; Sharma & Khanal, 2010). Other ethnic minorities were either left out completely or there was minimal grant of lands. The period before 1950s thus saw resistance from those that were assigned land rights through grants, whereas after 1950s ethnic minorities that were left out were the major participants of any efforts at resistance. Nepal's history of resistance thus relies on not just ownership of land but also on ethnicity in so far as ownership of land was dependent on ethnicity. Among the many instances of resistance, the most interesting instance is the resistance to the conversion of Kipat Lands into Raiker lands. Kipat was a form of communal land ownership which was characterised by a claim to rights over land as a result of being a member of a particular ethnic group or a resident of a particular location. While this system was prevalent among the Kirats of Nepal in eastern Nepal, some accounts also suggest

among the state, tenants and jagirholders (Koirala, 1987). iv. Rakam, just like the Jagir system, was the remuneration for services provided to the state in the form of claim over crops accorded to carpenters, masons, bricklayers, stonecutters, mail carriers, mine workers, artisans etc or any other work deemed to lower than those where jagir was assigned. iv. Kipat is among the oldest forms of land tenure system recorded in Nepal. Kipat land is essentially a form of communal tenure. This was mostly prevalent in the eastern hills of Nepal especially in Dhankuta and Illam and under this system, land was cultivated on an individual basis but the ownership rights lay with the community (Koirala, 1987; Regmi, 1976)

its prevalence in western Nepal among the ethnic groups Danwars, Sunwars, Tamangs, Sherpas, Khumals and Lepchas. Efforts made to limit inheritance rights within the Kipat system in the late 1780s were successfully resisted by communities, between 1913-1917 efforts from the government to abolish Kipat tenure also suffered a similar fate. In 1968 however, all Kipat lands were abolished, resulting in the loss of any claims over tribal lands held by members of the ethnic communities. A combination of factors is believed to be responsible for the successful abolishment including but not limited to, the incorporation of other ethnic groups into Kipat Land-holding area, a weak literate population within the ethnic community, and limited access to policy circles in the capital city and a continued effort from the state to convert all kipat lands to Raiker lands (Caplan, 1967; Cox, 1990; Dhakal, 2011; Joshi & Mason, 2007).

The recorded number of ethnic nationalities is 125 in Nepal. In order to limit the scope of our study we only focus on those ethnicity that are classified as Indigenous. This allows us to study resistance for those categories of ethnicity that have lower average land-holdings, were previously left-out in the context of Land grants systems in Nepal and have had a low participation rate in institutions in Nepal. The National Foundation for Identification of Indigenous Nationalities act, 2002, identifies 59 ethnicity as indigenous, we focus our analysis on the 59 categories².

3 Mechanisms of Rightful Resistance

Throughout Nepal's constitutional history, Private property rights have been established as a limited right to the extent that confiscation based on prevailing laws has served as a limit to the absolute enjoyment of private property rights³. In the present context, Nepal's Land acquisition procedures are guided by the Land Acquisition act, 1977⁴. Compensation for property appropriated by the state based on the legal provision of the act should be based on a combination of prevailing value of land at the time of confiscation, expenses incurred for relocation and damages for removal of any structure, crops, trees, compound walls etc⁵. However, actual compensation paid to the landowner seldom meets these criteria⁶ In fact, the legislation on appropriation of land contains an ap-

²The subtle distinctions between ethnicity and Indigenous nationality are not the subject matter of this paper, hereafter we use the words ethnicity and Indigenous interchangeably to mean the same thing i.e. classified as an Indigenous nationality

³The Interim Government of Nepal Act, 1984, recognised security of Private property as a fundamental right, The Interim government of Nepal act, 1951 to set out the right to acquire, hold, and dispose of property in accordance with the law to be a fundamental principle. Both the Constitution of Kingdom of Nepal, 1959 and Constitution of Nepal, 1962 follow in the footsteps of previous constitutions. The constitution of Kingdom of Nepal, 1990 differs slightly to the extent that it adds the right to compensation for confiscation in accordance with the law as a fundamental right. Both the Interim Constitution of Nepal, 2008 and the prevailing Constitution of Nepal (2015) gives continuity to this provision

⁴The detailed rules of confiscation are provided in Land acquisition rules, 1978

⁵Land act, 1977, sections 10 through 18 detail the provisions

⁶Land act, 1977 provides that the Government of Nepal may decide the basis of compensation and valuation by publishing a notice in Nepal Gazette from time to time. A notice was

peal mechanism in case any affected party is dissatisfied with the amount of compensation so decided⁷ Appeal in the first instance is therefore an indicator of any resistance to confiscation to confiscation or more appropriately a resistance to value of compensation deemed appropriate by the state. The right to appeal does not extend to the decision rendered in case a party has submitted an application for revaluation.

Additionally, another significant mechanism of resistance stems from the use of writ jurisdiction. The extraordinary jurisdiction of Supreme court of Nepal allows it to hear and settle petitions that challenge any decision based on the grounds that they violate the fundamental rights of the petitioner and a mechanism for remedy is either absent, inadequate or ineffective⁸. Since our primary variable of interest is success or failure of resistance, we construct a novel data-set consisting of land acquisition instances where resistance is recorded. In order to construct the data-set, we make use of court records. Although, the power to issue any decision for any petition relying on writ jurisdiction is granted to both the Supreme Court of Nepal and the High Courts, instances of use of writ jurisdiction however were only found in the Supreme Court. One possible explanation for this phenomenon could be that up until 2015, writ jurisdiction was only under the purview of Supreme Court of Nepal. The adoption of the Federal Constitution in 2015 transformed the unitary judicial system into a quasi-federal judicial system in-so-far as the exercise of extraordinary jurisdiction by both the supreme court and high court is concerned⁹. More importantly however, the scope of appeal for any petition decided by the supreme court is limited, whereas in the case of high courts, the room for appeal by the supreme court is an option available to the aggrieved party¹⁰. The use of limited scope of appeal as a strategy could also be an explanation for the concentration of petitions in the Supreme court of Nepal.

4 Data Collection Strategy and Descriptive Statistics

We collect data on all cases registered in the Supreme Court of Nepal strictly related to land confiscation regardless of whether a final judgement has been

published in 1978, however, no changes have been made to valuation scheme since.

⁷A party not satisfied with the amount of compensation can submit a letter to the Ministry of Home affairs for revaluation of property confiscated.

⁸The rules of Jurisdiction are Laid out in the Constitution of Nepal, Administration of Justice Act and Supreme Court Regulations.

⁹Prior to 2015, the Court structure of Nepal consisted of one Supreme Court, sixteen Appellate Courts and seventy-five District Courts, after 2015, the Appellate courts were transformed into High Courts and their number subsequently decreased to 7, one each for the seven provinces of Nepal. Similarly two District Courts were added. Appellate courts writ jurisdiction was only limited to Habeas Corpus, whereas, High courts writ jurisdiction allows it to issue Mandamus, Certiorari, Prohibition and Quo Warranto.

¹⁰Supreme Courts in Nepal cannot revisit cases decided by them until and unless it is shown that there was a serious misinterpretation of the law, constitution and precedents and/or crucial evidence that was earlier left out from the proceeding has come to light

delivered or not. One caveat to note in this approach is that observations where appeal in the first instance was used as a mechanism of resistance but not the second approach, although important, can be missed out completely. This should not however be construed as meaning that appeal in the first instance as a mechanism of resistance is not studied. Supreme Court observations contain petitions where appeal in case of dissatisfaction with the amount of compensation was used as the first step of resistance. It also includes those instances where writ jurisdiction as a mechanism of resistance was used without the use of the right of appeal in the first instance.

We go through each individual petition file, which itself consists of the petitioner's plaint, the written response of the respondent, notes of proceedings (in a case where judgement is rendered), copies of land deeds, copies of the government decision to appropriate land, copies of the government decision on the amount compensation to be paid during appropriation and copies of the decision in case of appeal in the first instance. Based on these documents, we collect information on the date on which appropriation occurred, the date on which the petition has been filed, the petitioner's ethnicity, the total land area of the petitioner, the total confiscated land area of the petitioner, whether or not the petitioner used the right of appeal in the first instance, success or failure in case of use of right of appeal in the first instance, the nature of confiscation, the nature of petition filed, the nature of compensation demanded, the number of precedents cited in the petition, the number of precedents cited by the respondent, amount of compensation received if any, whether or not the petitioner demanded issuance of an interim order, and the success of demand for an interim order. Based on the surname of the petitioner, we categorize the ethnicity of the petitioner, in doing so we have ample information on the nature of ethnicity within any given joint petition. Our data-set consists of information on petitions where the final verdict has been rendered and those where it is sub-judice. For sub-judice petitions, our measure of resistance is whether an interim order has been issued in favor of the petition where it has been demanded¹¹. In case of petitions that have already been decided, resistance is measured as the outcome of the judgement, a successful resistance would be a judgement in favor of the petitioner, and a failed attempt at resistance would be a judgement in favor of the respondent.

Table 1 presents descriptive statistics of our key variables. A total of 170 petitions have been filed in the supreme court to date. Among these, the final verdict has been delivered on 27 petitions, 143 petitions still remain sub-judice. A total of 3521 petitioners have approached the supreme court. Of these petitioners, the mean number of petitioners not classified as indigenous is higher. This is to be expected since ownership of land is greater for non-indigenous nationalities in comparison to indigenous nationalities. This is further corroborated by the average land holding of total non-indigenous petitioners. More interestingly, however, in petitions that used the right of appeal as the first step

¹¹Pending the final decision, the petitioner's plea consists of a demand for interim order issued against the government agency to halt any proceedings of land confiscation until a final verdict has been reached

of resistance, the mean number of indigenous and non-indigenous petitioners is almost identical, whereas, for petitions that did not, the mean number of the non-indigenous petitioner is higher than the mean indigenous petitioner. This does suggest that there is some form of relationship between decisions taken as a group and group homogeneity derived from sharing similar indigenous status. The ratio of average land holding confiscated to average land holding is also higher for petitioners of indigenous nationalities for all categories except for one category i.e. petitions where right of appeal was not used. This is to be expected since the mean number of petitioners of non-indigenous identity is higher in such instances. More interestingly, however, it does suggest that petitioners of indigenous nationality are likely to exhaust all forms of mechanisms for rightful resistance.

	Delivery of Verdict			Use of Right of Appeal		
	No	Yes	Total	No	Yes	Total
Petitioners Categorised as Indigenous	10.89 (22.95)	2.423 (7.044)	9.350 (21.20)	6.053 (17.64)	10.89 (21.84)	9.453 (20.73)
Petitioners not classified as Indigenous	12.68 (29.80)	3 (3.464)	10.92 (27.23)	14.21 (41.68)	10.80 (20.90)	11.81 (28.54)
Total Number of petitioners in any given unique case	23.57 (46.18)	5.423 (8.467)	20.27 (42.47)	20.26 (56.39)	21.69 (37.00)	21.27 (43.43)
Total Land Area Confiscated	247744.5 (752909.6)	202013.3 (236285.8)	239429.8 (687911.3)	182106.8 (297473.3)	279073.6 (841252.4)	250286.6 (723678.1)
Land Area appropriated by the state	170789.1 (701189.6)	235608.1 (622606.2)	182574.4 (685943.8)	138375.1 (339834.4)	179371.1 (776006.2)	167200.4 (675280.4)
Total land area of petitioners classified as Indigenous	97240.1 (467585.2)	24211.1 (67334.4)	83962.1 (424501.1)	20874.3 (48967.1)	114320.0 (530078.2)	86578.3 (446592.6)
Total land area of petitioners classified as Non-Indigenous	150504.4 (379619.7)	177802.2 (243525.3)	155467.7 (358158.0)	161232.5 (293746.8)	164753.6 (403812.4)	163708.3 (373383.1)
Appropriated Land area of petitioners classified as Indigenous	74001.1 (458249.2)	14844.8 (59866.7)	63245.4 (415569.8)	13208.6 (42710.5)	84640.1 (520032.1)	63433.8 (437174.2)
Appropriated Land Area of Petitioners not classified as Indigenous	96788.0 (301693.6)	220763.3 (624991.1)	119328.9 (381347.8)	125166.6 (320053.4)	94731.0 (294791.7)	103766.6 (301559.0)
N	142	27	169	128	39	167

Table 1: Number of Observations categorised by Delivery of Judgement and Use of Right of Appeal (Standard Deviations recorded in brackets)

Figure 1 presents the map of Nepal, with districts colour-coded to represent the total number of cases. Our data set consists of observations from 45 districts, with the number of cases ranging from 1 to 45. The concentration of cases is higher in urban centres in Nepal. Since the market value of land is higher in urban centres, greater resistance to confiscation is to be expected. This does not however mean that resistance to confiscation is minimal in non-urban centers. Kathmandu district has the highest number of petitions filed (45), followed by Lalitpur (12), Makwanpur (12) and Bhaktapur(10). Other districts record a single-digit petition. One possible explanation for a lower number of petitions from non-urban centres could be the distance to the Supreme Court of Nepal. Nepal’s judiciary is quasi-federal in nature i.e. only one Supreme Court exists located in the capital city Kathmandu which settles all matters federal, provincial and local based on its original and appellate jurisdiction. The cost

of petitions along with the time taken to reach a final verdict (on average the Supreme Court of Nepal takes 547 working days to settle a case) could outweigh the market value of non-urban centre land.

5 Results

We first begin by estimating the likelihood of a group using both mechanisms of resistance. The mean number of indigenous and non-indigenous petitioners is almost identical for observations using both mechanisms of resistance, whereas for observations using only writ jurisdiction as a mechanism the mean number of non-indigenous petitioners is higher. We first calculate the proportion of indigenous to non-indigenous petitioners within any joint petition. We then estimate the likelihood of a petitioner using both mechanisms of resistance as a result of the joint petition consisting of more than 50 per cent of petitioners classified as Indigenous nationalities. A joint petition is characterized by the involvement of petitioners belonging to the same location. It would thus be reasonable to assume that a joint petition where there is a higher number of petitioners classified as indigenous nationalities is reflective of the location of land confiscation. Group decision-making to that end can be influenced by petitioners belonging to indigenous nationality. This allows us to analyse the dynamics of resistance vis-a-vis ethnicity.

Column 1 in table 2 presents the likelihood of a petitioner using both mechanisms of resistance as a result of the involvement of a higher number of individuals classified as indigenous nationalities. We also estimate the likelihood of the nature of confiscation on the use of both mechanisms of resistance along with the likelihood by categories of indigenous nationality. Our results suggest that a petitioner is 31 per cent more likely to use both mechanisms of resistance if the overall number of people from the location of confiscation consists of more than 50 per cent indigenous nationalities. A petitioner is also more likely to use both forms of resistance if the confiscation is for infrastructure development projects. This is most notably because, a large number of observations in our data-set, contain land confiscation for electricity generation and transmission projects. These projects are carried out by the Nepal Electricity Authority which is a quasi government agency in partnership with private developers. In such instances the use of appeal as a mechanism of resistance could be a well thought decision, since private developers are more likely to settle given the costs of delay in project implementation. Interestingly, the effect of belonging to an indigenous nationality itself reduces the likelihood of using both forms of resistance. One explanation for this could be that based on the various categories of indigenous nationality the use of mechanisms of resistance differs. In column 2, we estimate the the likelihood based on several categories of indigenous nationalities. Although the results are insignificant for most categories, we do see variations, for instance the likelihood of Majhi's using both forms of resistance is higher than Gurungs, whereas for other categories, although insignificant suggest that they are less likely to use both forms of resistance.

The mechanism of resistance could therefore be influenced by strength of the various categories of indigenous nationality. It is likely that where the group is able to mobilise quickly and shows signs of strong group homogeneity linked with adequate participation in government institutions, resistance could be in the form of petitions filed in the supreme court. Since, the supreme court is the final arbiter of most conflicts involving a legal question in Nepal, indigenous nationalities with strong characteristics of homogeneity and a history of informal resistance, could seek to establish a precedent through the court itself to limit instances of confiscation. This could particularly be true for the Newar community that is characterised by not just a concentration within particular districts but also with a history of resistance to any perceived threats to their own values and practices.

	(1)	(2)
Petitions with Proportion of Indigenous groups > 0.5	0.315*** (-5.64)	0.280*** (-4.84)
Confiscation for Infrastructure Development	0.213** (-2.76)	0.148 (-1.83)
Confiscation for projects other than Infrastructure Development	-1.360*** (-5.17)	-1.323*** (-5.08)
Petitioner classified as Indigenous	-0.128* (-2.34)	0.107 (-0.36)
Gurung		0.311 (-0.67)
Tamang		-0.0957 (-0.30)
Tharu		1.335** (-3.21)
Newar		-0.345 (-1.14)
Magar		0.397 (-1.04)
Majhi		-1.975*** (-4.06)
Constant	0.425*** (-11.46)	0.442*** (-11.81)
Observations	3519	3442

Table 2: Probit regression estimating the likelihood using both forms of resistance (t-statistics in parentheses * $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$)

Next, we estimate the likelihood of success or failure of efforts at resistance through writ jurisdiction as a result of belonging to an indigenous nationality, having more number of indigenous petitioners within a particular writ petition and other variables. Table 3, column 1 presents the likelihood of winning a particular petition as a result of the proportion of indigenous petitioners, the number of precedents cited and the total area of confiscated land. In addition to this columns 2 through 4 also estimate the effects of use of right of appeal, nature of confiscation, effect of different categories of indigenous nationalities and the year in which petition was filed. In column 5, instead of using proportion, we use the number of petitioners belonging to indigenous and non-indigenous

nationality along with other variables.

Our results suggest that ethnicity, characterized by belonging to a particular indigenous community, is an important factor in successful resistance. Columns 1 through 4 all report the increase in likelihood of successful resistance as a result of having a higher proportion of petitioners belonging to some category of indigenous nationality. Additionally, the number of precedents cited by the petitioner also increases the likelihood but its effect is marginal compared to the variable proportion. As was the case with the use of both forms of resistance, the likelihood of success is different depending on the category of indigenous nationality itself. In terms of both the proportion and the absolute number of petitioners belonging to an indigenous nationality, the likelihood of success is greater when there is involvement of higher number of indigenous petitioners. The effect could also spill over to non-indigenous petitioners. More interestingly however, the likelihood of success is also determined by the year in which the petition was filed. Whereas for years before 2016, the likelihood of failure is greater, post 2016, the likelihood of failure decreases significantly in comparison to pre-2016 periods. One likely explanation for this could be that in the year 2015 a new constitution came into force. The Constitution of Nepal(2015) makes several provisions Indigenous nationalities, these include participation in government agencies through proportional representation, establishment of Indigenous Nationalities Commission, equal protection under the law, an assurance to protect and promote language, culture and social tradition. Results from table 2, therefore suggest that along with belonging to an indigenous nationality being a predictor of successful resistance, the year in which petition is filed is in itself an important predictor that needs to be considered.

	(1)	(2)	(3)	(4)	(5)
Petitions with proportion of Indigenous petitioner>0.5	0.165* (2.51)	0.165* (2.51)	0.513*** (5.07)	0.513*** (5.07)	
Precedents Cited	0.0268* (2.15)	0.0268* (2.15)	0.0924*** (4.19)	0.0924*** (4.19)	-0.132*** (-4.35)
ConfiscatedLand	-0.00000164** (-2.87)	-0.00000164** (-2.87)	-0.00000387 (-1.75)	-0.00000387 (-1.75)	
	(1.95)	(1.95)	(-2.27)	(-2.27)	(-3.11)
Use of right of appeal			0.788*** (6.05)	0.788*** (6.05)	0.128 (0.89)
Confiscation for Infrastructure development			-0.278 (-1.57)	-0.278 (-1.57)	0.326 (1.54)
Tamang			1.060* (2.02)	1.060* (2.02)	1.263* (2.01)
Newar			1.695*** (3.40)	1.695*** (3.40)	2.081*** (3.48)
Magar			0.925 (1.49)	0.925 (1.49)	1.502* (2.10)
Rai			1.978** (2.60)	1.978** (2.60)	2.351* (2.32)
2004			-4.034*** (-7.69)	-4.034*** (-7.69)	-5.915*** (-11.29)
2013			-1.950*** (-4.37)	-1.950*** (-4.37)	-3.103*** (-7.19)
2014			-2.597** (-2.97)	-2.597** (-2.97)	-3.354*** (-3.43)
2016			-0.451 (-1.12)	-0.451 (-1.12)	0.347 (0.90)
2017			-2.745*** (-7.13)	-2.745*** (-7.13)	-1.692*** (-4.42)
2018			-2.525*** (-6.77)	-2.525*** (-6.77)	-1.468*** (-4.27)
2019			-3.586*** (-9.21)	-3.586*** (-9.21)	-3.022*** (-8.22)
2020			-0.108 (-0.24)	-0.108 (-0.24)	0.544 (1.33)
Total ethnic Petitioners					0.00564** (2.99)
Total non-ethnic Petitioners					-0.0426*** (-12.84)
<i>cons</i>	-0.0603 (-1.17)	-0.0603 (-1.17)	1.280*** (3.42)	1.280*** (3.42)	3.162*** (8.16)
N	2331	2331	1968	1968	1968
pseudo R-sq	0.013	0.013	0.438	0.438	0.670

Table 3: Probit regression estimating the likelihood of successful resistance (t-statistics in parentheses * p<0.05 ** p<0.01 *** p<0.001)

We therefore estimate the effect of both the year of petition and indigenous

identity on success of resistance by making use of segmented probit regression. This gives us the likelihood of success after the year 2015 in comparison to the year 2015. The year 2015 therefore becomes our Intervention year and estimates will show if the promulgation of a new constitution that guarantees several rights to indigenous nationalities had any effect on their chances of successfully resisting to private property confiscation.

Table 4 presents the result of segmented probit regression. The variable Year shows the likelihood of success in the pre-intervention period, the variable Intervention shows the likelihood of success just after the start of the intervention period and the variable Post-Intervention after shows the difference in outcome per unit time between post- and pre-intervention periods. The values of variables Year and Post-Intervention are both insignificant. Whereas, the likelihood just after the start of the intervention period in 2015 is significant and shows that there is a decrease in likelihood of success. There is one possible explanation for this, while the Constitution of Nepal guarantees rights to Indigenous Nationalities, its enforcement would depend on the establishment of the Indigenous Nationalities Commission. The commission was only established in 2018, therefore, effects could be seen from 2018 onwards. To that end, we estimate the effects by taking the year 2018 as the start of the Intervention year rather than 2015.

	(1)	(2)	(3)	(4)
Year	0.493 (1.55)	0.541 (1.80)	0.523* (2.02)	0.393* (2.41)
Intervention	-1.593* (-2.04)	-1.730* (-2.30)	-1.703* (-2.49)	-1.738** (-2.84)
Post Intervention	-0.365 (-1.15)	-0.481 (-1.59)	-0.489 (-1.87)	-0.325 (-1.93)
Average Confiscated Land Area in SQ ft		-0.0000210*** (-7.91)	-0.00000697* (-1.98)	-0.0000164** (-2.91)
Tamang			-0.151 (-0.38)	0.281 (0.69)
Dhimal			-1.903*** (-3.31)	-1.898** (-3.18)
Newar			0.627 (1.65)	0.746* (1.96)
Magar			0.617 (1.37)	0.619 (1.32)
Rai			0.463 (0.71)	0.376 (0.57)
Appeal in case of dissatisfaction with the amount of compensation				2.087*** (3.40)
Success/failure in case of appeal				-0.0911 (-1.36)
Constant	-11.23 (-1.48)	-11.93 (-1.67)	-11.97 (-1.94)	-10.57** (-2.71)
Observations	1248	986	923	895
Pseudo R2	0.083	0.157	0.222	0.313

Table 4: Segmented Probit Regression with 2015 as treatment year (t-statistics in parentheses * p<0.05 ** p<0.01 *** p<0.001)

In table 5, we present the results of the segmented-probit regression to look for effects of establishment of Indigenous Nationalities commission on successfully resistance. This allows us to study whether recognition of the existence of a particular group has any effect on resistance. While Indigenous Nationalities had been recognised through the National Foundation for development of Indigenous Nationalities act, 2002, the institutional mechanisms for its enforcement remained absent. Furthermore, the act only came into force in 2008 and its single greatest achievement has been the identification of 59 indigenous nationalities. Recognition of existence of Indigenous nationalities therefore has been its contribution. However, it wasn't until, 2015 when significant strides were made through the Constitution of Nepal. The institutional mechanism however was only setup in 2018 and therefore any effects could reasonably follow from 2018 on wards. Although the variable Intervention suggests that just after the establishment of the commission, petitioners were less likely to succeed, this result must be interpreted and complimented by the variable Post-intervention. Post-intervention suggests that the difference in post-intervention likelihood and

pre-intervention is positive i.e. as the number of year passes in the post intervention period, the likelihood of success must increase at a significant rate, or the likelihood of failure decreases significantly in the post intervention period. Although it does suggest that the institutionalisation of Indigenous nationalities commission had an effect chances of successful resistance, causality cannot be established. There are number of factor that can influence the success, these might be precedents set by the supreme court itself on matters of land confiscation and its relationship between the cultural values of ethnic communities, the outdated nature of Land confiscation laws in Nepal which are grounds for stronger resistance and success and stronger outlook towards private property rights protection in recent years ¹².

	(1)	(2)	(3)	(4)
Year	0.431*** (6.15)	0.204*** (7.78)	0.202*** (8.15)	0.266*** (7.87)
Intervention	-3.586*** (-15.64)	-3.463*** (-14.98)	-3.331*** (-13.95)	-4.630*** (-11.94)
Intervention _{post}	0.879*** (7.75)	1.047*** (11.29)	0.991*** (10.21)	1.567*** (10.93)
Average Confiscated Land Area in SQ ft		-0.0000151*** (-5.45)	-0.00000345 (-0.94)	-7.63e-08 (-0.01)
Tamang			-0.273 (-0.65)	0.319 (0.71)
Dhimal			-2.276* (-2.42)	-3.066 (-1.61)
Newar			0.494 (1.23)	0.317 (0.75)
Magar			0.419 (0.83)	-0.0357 (-0.07)
Rai			1.631* (2.56)	1.942** (2.99)
Appeal in case of dissatisfaction with the amount of compensation				-1.328 (-1.81)
Success/failure in case of appeal				0.0649 (0.84)
Constant	-11.38*** (-5.89)	-4.806*** (-6.74)	-5.170*** (-6.55)	-5.567*** (-5.19)
Observations	1248	986	923	895
Pseudo R-squared	0.279	0.359	0.401	0.464

Table 5: Segmented Probit Regression Output with 2018 as Intervention year (t-statistics in parentheses * p<0.05 ** p<0.01 *** p<0.001)

The use of state's rhetoric and policies to resist confiscation or resist under-valuation of property during confiscation is a natural phenomenon. Previous

¹²In fact, in 2017 the Supreme Court of Nepal decided that Land rights are interlinked with Cultural and social rights and confiscation must not be seen as a violation of property rights but also of cultural and social rights

attempts at studying the subject matter has only focused on mechanisms of resistance, tactics and strategies use and the political and social context of resistance. Our attempt here is to add to the literature by studying factors affecting success or failure. Our findings suggest that indigenous characteristics of a petitioner have an effect on the likelihood of successful resistance as measured through winning a petition or having an interim order issued. Although we do-not know of the causal relationship between the two, it would be a topic worth exploring. We also find that when in a particular geography, the number of people belonging to an indigenous nationality is higher, their likelihood of exhausting all forms of legal recourse is higher. Moreover, we find that as a group Indigenous nationalities are more likely to follow all forms of legal procedure to the letter than is the other groups. This could perhaps be a result of any perceived threat to chances of successful resistance if the letter of the law is not followed. Whereas, other groups have been successful at bypassing certain procedures in its entirety and have used a separate strategy altogether. Our data set does not contain those instances where there is no resistance, to that end, our results may be biased. A further area of research could be studying what effects resistance itself in an empirical manner. This would require collection of all data regarding land confiscation and matching them with court records to create observations where no resistance is recorded. Variables such as geography, ethnic composition of the community, average per-capita income within a particular geography, literacy rate could be predictors of resistance. This is an aspect we have completely left out and one that requires further research.

6 Traditional institutions, land ownership and land management in the mountain community of Nepal: A case study of Manang village

Introduction and Background of the study: This paper is an outcome of my independent research conducted between July 2018 to May 2022 to understand the socio-cultural, economic, political, and development history of Manang district. Nepal is the country of 125 ethnic group and socio-cultural diversity. Each ethnic group carries distinct history and follows different socio-cultural, economic, and political practices. Land is the prominent natural resource for many people in Nepal (Regmi, 1977). Considering land in the form of private property and important resource this research attempt to probe interface between traditional institutions and state institutions on land ownership and management. These issues are substantiated by empirical findings and lived experiences of people from two villages in the mountain region of Nepal namely, Manang and Ghelanchowk inhabited by Gurung and Ghale major caste group sharing common culture, value and belief system. Mahesh Chandra Regmi (henceforth, Regmi) argues Nepal is predominantly agricultural country (Regmi, 1972). Significant work of Regmi (1971, 1976 & 1978) on land tenure, ownership, political and economic history of Nepal focused more on hill and Tarai area and had little

discussion about land tenure and ownership pattern in mountain region of Nepal. Since, agriculture is important part of economy people living in the mountain community of Nepal more discussions of land tenure and ownership pattern of such region is crucial in order to understand total political and economic history of the country. Understanding the role and functions of local traditional institutions and diverse social practices in such community help us to make meaningful interpretations of people, place, private property, and politico-economic history.

Given its unique socio-cultural and economic practices this study focuses on past and present trends of land ownership and management covering two historical periods prior to 1970s in absence of state institutions and post 1970s in presence of the state institutions in Manang, one of the mountain villages of Nepal. Furthermore paper make inquiries about how past and current practices of land ownership and land use pattern bring consequences on the individual and collective lives of the people in relation to their social, geographical, and economic mobility as well as long established power structures. Paper further investigates how different historical forces and institutional practices shape current socio-economic and political life of the local inhabitants. This study is qualitative and more empirical in nature that records lived experiences of people because such qualitative and empirical inquiry of people's actual practices on the ground furthers our understanding of political, social, cultural, economical, and historical context of mobility and the concept of private property.

Study site: Two villages were selected for the purpose of this study. The first village is Manang from Manang Ngisyang valley of upper Manang situated in 3540 meters above from sea level. Populated by Gurung, Ghale, and Biswakarma, people of this village shares common socio-cultural practice, belief and value system. Unique customary practices and traditional institutions functioning till date in Manang village I focus my study on socio-economic and political aspects on private property particularly land ownership and management.

The second village is Ghelanchowk from Naso rural municipality from lower Manang center 2160 meter from sea level. 4.76 square kilometer total area covered with total population of 276. The major caste group of Ghelanchowk village is Gurung and Dalit. People of this village share common culture, language, belief and value system. Homogenous in nature instance of this village shows how common socio-cultural tie and homogeneity help successful resistance and able to get fair market value price of private land confiscated by the state.

Socio-economic and political context: Manang is trans-Himalayan region of Nepal with total population of 5645 (CBS 2021). Situational paper of Gandaki province 2018 recorded Gurung is the major caste group with 52.4% of total population in terms of caste and ethnicity. Covered 433.4 square kilometer geographical area total population of Manang Ngisyang valley is 2222 (CBS, 2011). Total land is recorded 232061 hector with only 2153 hector agricultural land (1.0% of total available land) with 93.7% land used for agriculture (Gandaki Province situational paper, 2018). Inhabited by 72.86% of Gurung, and 8.15% Ghale population Manang-Ngisyang valley is homogenous in nature sharing common culture, belief and value system towards people and place. Once

an agrarian society, past economy of Manang village extended from agriculture and animal husbandry to trade, tourism, and other multiple businesses inside and outside the country in present days. Factors contributing these changes in economy are limited agricultural production, harsh climatic condition, limited business opportunities, difficult geography and mobility outside the village. Many people migrated and settle down in the major cities of the country and abroad from latter half of the 20th century in search for better economic opportunities outside Manang village. People still practice agriculture, animal husbandry, trade of valuable herbals, run local inns, tourist hotels, and some are into transportation and logistics businesses these days. Major economic activities today in the place are tourism businesses such as hotels, restaurants and local inns followed by trade, agriculture and animal husbandry.

Mobility of people of Manang can be seen in different historical time periods as rulers, state and different political regimes eased trade and business opportunities by cutting tax and free mobility both inside and outside country. It is recorded that the state, rulers and different political regimes provided business and trade facilities to the people of Manang in different time period as recorded in his book entitled 'Manang' by Thakur Prasad Koirala first chief district officer (CDO) of Manang. In 1824 February 20 (1880 Falgun 10 B.S.) King Rajendra Bir Bikram Shah Dev provided lalmohar to the people of seven villages of Manang Ngisyang valley that waived border tax and allowed free trade within the country. In 1858 February 24 (1914 Falgun 15) shree 3 Janga Bahadur launched Khadga Nisaan in the name of people of Manang Ngisyang valley to pay Tiro rakam (tax) via Lamjung adda to Thapathali Palace instead of paying this tax to the Bistas of Jharkot Mustang without changing free trade policy and privileges given by previous regime to the people of Manang Ngisyang valley.

In 1884 March 13 (1940 Chaitra 02) King Ranodip Singh provided sanad mentioning according to 1881 B.S. (1824 A.D) and 1903 B.S. (1846) two stamped order (2 chhape purji) people of Manang Ngisyang valley could pay certain fee and conduct free trade and business. In 1934 April 4 (1990 Chaitra 22) shree 3 Juddha Samser Janga Bahadur gave order and privilege to the people of Manang Ngisyang valley for free trade without any obstacle. If we look at the various record of government in different time period such as Laalmohar, Khadga nisaan, sanad, aadesh, chhape purji and Nirnaya faisala shree 5 (Shah regime) and shree 3 (Rana regime) governments has provided business and trade privileges to the people of Manang Ngisyang valley. In the year 1967 (2024 B.S) King Mahendra issued passport for 5 years to the people of Manang for foreign trade and business. King Birendra also provided 3 years validity passport to the people of Manang for foreign trade and business. Especially people of Manang played important role to bring foreign goods in Kathmandu since then and still many people from Manang doing different foreign trade and businesses these days (Koirala, 1981).

This written document and evidence shows that one of the major contributions of economic and geographical mobility of people of Manang village was supported by the state and its rulers from the distant past. This privilege has

brought significant changes in the lives of many people of Manang village both economically and socially. Utilizing privilege provided by the state those people engaged in businesses thrived and accumulated personal wealth and private properties both in the village and outside village. Today economic disparity among the villagers is clearly evident in terms of landownership pattern and economic activities people engaged in.

In my conversation with different informants about this free trade policy and privileges to the people of Manang Ngisyang valley the reasons behind providing such privilege by different regime and ruler of the country to the people of Manang were major setbacks of difficult geography, limited agricultural production, and hardship people of Manang was facing back then. Major changes in the economy of people of Manang were after 1970s when people started trade within the country and abroad. These privileges have brought consequences on the people's social, geographical, and economic mobility. Politically and symbolically Manang village is considered to be the biggest and most powerful village *chhathum* (father) among the seven villages of this Manang Ngisyang valley (Koirala, 1981). This is because of population size and the political history this village carries. In the year 1976 Pema Chhiring Gurung represented national panchayat from Manang district. Apart from 2007 election (Dev Gurung from lower Manang) all the national politics representatives of Manang district was from certain family of Manang village. From 1977 to 2006 prior to the federal structure of the country, in the district development committee top level representatives were also from Manang village. This shows that political power structure brought consequences on their territorial politics leading this to central and national level politics of the country. All of these political figures belong to the certain kin and family group from Manang village. These people are economically well off and socially recognized in the village. Post 1970s people's mobility outside their original territory brought changes in economy of people of this area and those people who became more mobile and engaged in trade and businesses inside and outside country have thrived and accumulated wealth. With this economic transformation people settled down in major cities of the country like Kathmandu, Pokhara, and Chitawan. Many people from Manang village settle down in countries like USA, Singapore, Hong Kong, and Bangkok due to their success in trade and businesses. This improved economic situation further opened avenues to the second generations of this region to get better education, health facilities, and economic opportunities inside and outside country that contributed in economic, geographical, and social mobility. Local traditional institutions and customary practices: Jonathan R. Quinn (2014) states "term customary to convey the idea that these practices are commonly used, and founded upon long continued practices, even though they are not themselves traditional" (Quinn 2014 p 31). The unique characteristic of socio-economic and political practices of Manang village is governed by their own local traditional institutions such as *Hyulba*, *Mitheba*, and *Aama* that is functional even today. *Hyulba* is one of the important collective and powerful institutions of inhabitants of the village; each and every family member becomes part of this institution by living there. The main function of this institution

is to govern total system for instance, social, cultural, economic and political aspects of the village and this customary practice has obligations, constraints and disputes (Keir Martin, 2007). Regmi opines “the political system of any society is a basic part of its organization and thus has a profound impact on its economic life” (Regmi, 1978). These traditional institutions are also greater part of the political system of the village. I have used customary practices and traditional institutions in both constraint and opportunities for the inhabitants of the study area in this paper for my analysis.

Mitheba literal meaning big man, acts captain of the village that looks after day to day activities of the people and play important role in decision making. The function of the mitheba is to maintain social order in the village. People used to elect mitheba in this place for every two year with age seniority in the past, today all elected members of local government under current federal structure of the country acts mitheba in village with the five years of time. Aama meaning mother in local language of people of this area and this institution is formed in Kathmandu that looks after and helps in decision making regarding any change on system of the village. Aama is 15 member body formed in Kathmandu from seven villages (two from each village) of Manang Ngisyang valley. This aama in Kathmandu also plays major role to control overall system of the village and valley in overall. Any changes in existing system of the village must be sanctioned by aama in Kathmandu. The main purpose of these three local traditional institutions is to control, govern and maintain overall (political, social, cultural, and economic) system of the village. These institutions played important role to maintain overall system of the village when there was no formal state laws, rules, and regulations. These institutions are functional and effective even today that governs people and maintains total system of their territory and its inhabitants. Land ownership pre and post 1970: Situated beneath mountain, Manang village settlement is situated in the flat lands surrounded by agriculture fields. Regmi states, “Agriculture does not appear to have been an important economic activity in the northern Himalayan region. This was due mainly to adverse climate and terrain factors” (Regmi, 1972). But if we look at the total occupied agriculture field in the Manang village it clearly shows that agriculture plays major role in the village economy. People are not commercial peasants from this village but their agricultural activities involved subsistence economy. People were peasants and animal herders measuring their economy and property in terms of agricultural land, number of animals like yak, sheep, and cow, and pasturelands controlled by the family and kin group. Today, situation is different than the past because of exposure to outer world, presence of the state institutions, migration and mobility caused changes in socio-economic and political life of inhabitants of this village. Many people share in terms of landholding size there are clear disparities between and among the people of village. The total number of land possessors by certain family members are inaccessible due to many original landowners live in the cities and abroad also cadastral and land management office did not allow providing such details for the purpose of privacy. Before cadastral and land management office establishment in Manang district land was held on a customary and communal basis.

Certain family and kin group holding more land than the average people of the village. The main reason for this disparity in land holding size was determined by kin group and family in the past. Prior to state's presence in the district land was controlled by family members and kin groups and later this used land by certain family and kin group verified by the system and local institutions of the village or provided right to use and control the land. Later this land was registered on the name of certain family and kin group after presence of the state institutions like cadastral and land management (maalpot) office.

In post 1970s presence of state institutions in the area has made significant changes in the land ownership. Kin and family group controlled land has been registered under state laws and land registration certificate was provided to the people who have completed the process. Used right of that land was previously sanctioned by the system of the village. Today, important criteria for owning and access to land are membership of the community (Caplan, 1970) maintained by traditional institutions that still functions to govern people and village. This shows that in order to own land in the village one must become a member of the Hyulba first. As Caplan 1970 notes "in several parts of both the eastern and western hill regions a number of indigenous ethnic groups owned lands on a communal basis without any legal title under what was known as kiptat system. The communal nature of kiptat tenure and its basis primarily on ethnic affinity would appear to indicate its origin in the occupation of particular areas in the past by members of particular ethnic group" (Caplan, 1970). So as in Manang village owning land requires membership of Hyulba and its total system. One inherits land from their forefathers and parents. There are two ways that one can become a member of the Hyulba or village either by birth in the place or by marriage in the same village. Without being a member of a Hyulba it is impossible one to acquire and access land. Caplan (1970) shows in his study of Limbu of eastern Nepal without kiptat owning kin no ownership rights to kiptat land. Land ownership is possess by certain kin group therefore non-kin group to this kiptat land owning group are restricted to ownership rights to kiptat land. In the case of Manang land is controlled by the system of the village since long distant past. The reason behind such control by village institution is that resources were scarce back then and it is associated with survival strategy of the past generation by controlling land and territory from external intervention. This system was carried forward by preceding generations and maintaining by the current generation. In the case of Manang village membership of Hyulba is the basis for access and ownership to land. Constraints of customary practice on buying and selling land at Manang: In my analysis I use custom as a set of rules. Customary ways of thinking and acting (Kier Martin, 2007) have an impact on buying and selling land in Manang. Private land in this analysis is land that is registered under person's name and own land registration certificate from the state. Both individual private lands and communal lands are controlled and managed by the local institutions of the village since long. There is no record of land transactions to any outsiders or non member of Hyulba till date. As Regmi notes "kiptat was a form of communal land ownership, under which each person had the right to the exclusive use of a particular piece of land. However, his

rights to dispose of the land were restricted on the theory that the land belonged to the community as a whole” (Regmi, 1978). Till today land management in Manang is communal for example, even today sell, mortgage or bequeath of land to non-member of Hyulba is strictly prohibited. Another example of land controlled by the custom and institutions of the village is inside Manang village there are more than 15 individual land plots (about 200 meters in length and 50 meters in width) which are controlled by the institutions of the village by restricting to construct permanent structures. The only reason for this restriction to construct permanent structures on these private lands are every year on the month of November local people celebrate ne (horse racing festival) for two days. People grow vegetables in the spring and summer and leave empty in the winter. These private properties are not private when it comes to the transaction (buy and sell). Transactions must be sanctioned by the system of the village that includes Hyulba, mitheba, and aama. Prior to state’s presence in Manang district people of this area manage their property through customary practices of the village. It was evident that people from economically well off in terms of land possession and greater number of cattle from certain family group have governed the village in the past. This was gradually changed after the presence of the state and with the mobility of people of this valley exposed to outer world. People from greater kin network, politically exposed, and age order (seniority basis) enjoyed the post of Mitheba (chieftain) of the village. Although, process of electing mitheba was done through the sanction of villagers normally for three years and after three years on the basis of performance same person can remain again for the same position if not then villagers elect new mitheba from the village. This mitheba plays crucial role in decision making process of the village, looking after resources of the village, management of private and communal property and governing inhabitants of the village. This led to preserve resources and culture of the village in many ways. This customary practice is still functioning and effective in today’s date. The changes now seen in electing mitheba after federal structure of the country those people elected for the different post in the local level government becomes mitheba. Previously structure of the mitheba used to be a single individual, now the structure of the mitheba could be five or more than five depending upon number of elected representatives from the respective village. Role and function of the mitheba remain the same only time period and structure of the mitheba changed from three years to five years and single individual to group. There are reasons for this customary ways of thinking and acting by people of Manang village. People of this village see land as more than commodity. Their history, identity and social relations are embedded in this land thus, people are rigid to change and ok with the total system of the village governed by traditional institutions and customary ways. Presence of the state socio-economic and political changes: In theory, government and state can confiscate land within its territory in any given time. In practice, however, it is lengthy process because this customary practice and institutions were built upon longer time period and cannot change overnight. Regmi writes “the modern political concept of the state exercising full sovereign authority over all areas and all classes of people in the territories

comprising its dominions was unknown in nineteenth century” (Regmi, 1978). It is important to note that post 1970s situation has brought changes in the socio-economic and political life of the people of Manang Ngisyang valley. Situated in difficult geography and lack of infrastructural development such as road official presence of the state in Manang district is only after 1980s. Prior to 1980s district headquarter of the Manang was situated in the Kunchha of Lamjung district. Only in the mid 1980s district headquarter shifted in the Manang district and all the administrative works from the state’s side started from Manang district. Direct presence of the state in the area means people of Manang district are now direct surveillance of the state institutions, its rules and regulations. People are governed through mechanisms of the state formally and each individual is controlled by the state laws. Regmi states “at the time of the political unification in the latter part of the eighteenth century the agrarian economy in different parts of Nepal was characterized by social and economic relationships based largely on custom and tradition” (Regmi 1971). In Manang village after presence of the state land was formally registered under private/individual name and land registration certificate was provided. Landowners pay little tax of this registered land to the state via village development committee’s office. But, in practice land in the Manang village is control and manage by custom and tradition of the village. This shows legal provision and actual practice of people on the ground demonstrates policy and practice gap. With the presence of the state police, district administration office January 3, 1973 cadastral and Malpot office in April 14, 1971, district forest office and other offices were established in the district headquarter of the Manang and these offices run according to the state’s laws, rules and regulations to control and govern people and territory. This means people of Manang are no longer act on their own way as in the past and must abide by these laws, rules, and regulations of the state. This has consequences on local people’s social, cultural, economic, and political life. Example of this is that people must register their land in the government record, pay tax of their income and property, participate in the government planning, and follow the rules and regulations imposed by the state and formal government. In the year 1988 Annapurna Conservation Area Project (ACAP) office was established in the Manang district in order to conserve and protect the nature under Mahendra Trust Nature Conservation (now nature trust conservation). After establishment of the ACAP office in Manang it has controlled over resources like valuable herbs, timber, route permit charge from foreign tourist visiting Annapurna area, hunting is made illegal, collection of the tax from the hotels built in non-registered land in the different part within Manang district, and strict control and monitor over natural resources using patterns to the local inhabitants of this area. Prior to the establishment of the ACAP office in the area locals were enjoying the natural resources by using in their own way and managing in local ways. This was terminated in many ways after presence of the ACAP in the Manang district. I have noticed and recorded tensions between ACAP and local over access to resources and its management during my stay in the area. An example that illustrates how national park controls and restricts local to access resources is evident in Ben Campbell’s (2018) work on Rasuwa

district of Nepal by showing during the 2015 Nepal earthquake local people were restricted to access temporary shelter building materials from national park area in such adverse situation where disaster hit hard. People of Manang are aware that presence of the state means control over their territory and resources many ways. Therefore, customary practices and traditional institutions are agency for inhabitants of the area that protects their local ways of life and management of resources available for them and also overall system of the village. People of Manang were gradually begun to involve in the mainstream politics especially after 1980s. Presence of the state in the formal way in Manang district has forced people to join mainstream politics within the district and central level. The first political representative of Manang district in the national panchayat was Pema Chhiring Gurung from Manang village in 1976. In district development committee president post was held by three persons from 1989 to 2005 from Manang village. These political representations from Manang village have brought many consequences in social, economic, and political life of inhabitants of Manang village. For example, road buildings, micro hydropower development, suspension bridge construction, drinking water, and irrigation were top development priority of these political representatives of the Manang district. Customary practices and consequences: Local customary practices and institutions namely hyulba, mitheba, and aama historically played role to maintain social, cultural, economic, and political life of people of Manang village or overall system of village. The significance of these customary practices and local institutions are completely different than the common constitutional law of the country. One of the oldest institutions and traditional practice people of Manang village followed were Dhawa-Serpaa . The time period of Dhawa-Serpaa is normally 2 years appointed on the basis of age seniority (eligibility 18 years old to 60 years old male) by the villagers. On the basis of age seniority turn by turn in every two years villagers appoint/elect Dhawa (headman of village) and Serpaa (secretary of headman). No discrimination was there while appointing Dhawa-Serpaa. This Dhawa-Serpaa used to look after village for two years and solves the occurred problem in the village, providing justice without discrimination, and prevents and preserves resources and culture of the village. While providing justice Dhawa-Serpaa must be efficient and solve the problem quick. This system was transparent since hearing of any problem and solution of the problem was given in front of mass of villagers. In this day Dhawa-Serpaa is replaced by Mitheba (headman). Institutions such as hyulba, mitheba, aama are functioning to maintain socio-economic and political order of the village since long time. In order to promote and preserve the culture and custom of the village customary practices that people of Manang village still practicing are significant to the people of this village. These customary practices are playing significant role to maintain balance of the political, economic, social, and cultural life of the village that has consequences on both material and non-material life of the people residing in this village. Hyulba is the central institution where each and every member from all the household of the village becomes member of the Hyulba. Becoming member of the hyulba means one can participate in all activities sanctioned by Hyulba and enjoy the preserved and available resources

without violating set rules and boundaries created by Hyulba. Mitheba are the ones who play the role of the headman of the village elected by the members of the village according to seniority in the age. The main role of this mitheba is to play a central role of the mediator to keep balance and maintain harmony in the society, controlling people and place, and playing major roles in the decision making processes in the issues associated with individual and village. Aama is constitutional body of 15 members formed in Kathmandu from seven villages of Manang Ngisyang valley two members from each village. There is a communal land of these seven villages in certain territory of Manang Ngisyang valley and is controlled by all seven villages. In the year 2014, 800 ropani communal lands were leased for apple farming to one of the business family from Manang for 25 plus years sanctioned by Aama, Manang Marsyangdi club, and Mitheba from Manang Ngisyang valley. Aama plays significant role to maintain socio-cultural, economic, and political order of Manang Ngisyang valley. When major changes and decisions needs to be taken in this valley Aama gets involved with villagers to make a decisions. This Aama also plays crucial role to generate economy in Kathmandu to maintain and preserve socio-cultural aspects, promote and develop Manang Ngisyang valley. There is an argument between people living in the village and members of Aama in the Kathmandu about decision making process and changes in the village. One of my 45 years old male informant from Manang village shared his view on this control of Aama from Kathmandu about people living in the village by echoing “we live in this village and maintain village in our own way, those people living in the Kathmandu do not understand daily life and activities of the people in the village therefore in many things their interference in our system is unnecessary”. Agency, resistance and changes: One of the major changes that people of Manang village faces post 1970s is migration. People from village migrated in the different part of the cities and abroad that caused old settlements of the Manang village are almost empty and resided by migrated people from the Gorakha, Dhading, and Dolpa who came in Manang in search for work in hotels, agriculture, and skill and unskilled labor. In search for better economic opportunities contributed to economic mobility for first generations of people from Manang village. Since then second generations have migrated to the cities and abroad for better education, economic opportunities and other facilities. This migration has brought socio-economic and political changes people living in the village as well as those people migrated to the cities and abroad. Those people living in the village have maintained customary practices in order to save the culture and manage the tangible and intangible properties of the village. People not living in the village are also contributing to the village in direct and indirect ways. For example, people of Manang Ngisyang valley have established Manang Sewa Samaj, Manang Marsyangdi Club, Manang Woman Society, and Aama in Kathmandu directly and indirectly working for people of Manang Ngisyang valley. This contribution is associated with the power relations that have implications on the issues of these seven villages of Manang Ngisyang valley. Major decisions about Manang Ngisyang Valley have to go through several discussions between locals living in the village as well as members of these institutions in Kathmandu. Any

issue regarding Manang Ngisyang valley is addressed through this institutions in the first stage and also get finalize through this institutions. Resistance and fair market value of land confiscated by eminent domain: In the case of lower Manang Ghelanchowk 32 Ropani land was confiscated by the NEA in the year 2013 for sub-station construction purpose. The process of land confiscation by NEA went through lengthy process which is as follows, In the year 2013 NEA was in search of land for sub-station construction in the lower Manang. NEA published notice regarding this in Ghelanchowk and Odar village, after this notice people of this two villages conducted mass gathering (38 people signed in the minute register) regarding this issue and willing to provide land if they get price 10,00000 per aana. This demand was done through mass gatherings of villagers led by Dharma Jung Gurung and written application was submitted to the District Administration Office (DAO) Manang in district headquarter. Eight members concern committee from landowners was formed to deal with this issue. After series of meeting and mass gatherings of the villagers, landowners and concern committee people of these two villages organized mass gathering in the year 2073/03/14 on special present of former minister Dev Gurung from Odar village and proposed price determination of the land, evaluation of the land, and expenses of concern committee. In the same year 2073/05/04 meeting was conducted between landowners and concern committee and proposal was land price finalization 10,00,000 (ten lakh) rupees per ropani and gain tax waive for the landowners. Initially NEA verbally agreed to waive gain tax for the landowners but later landowners and concern committee wanted this gain tax waive in the written form from the NEA. After strong resistance from the landowners and concern committee later it was provided separate compensation money by NEA from which landowners gain tax from selling land was paid. Net amount of 10 lakh rupees per ropani was provided to the landowner's hand. In the year 2075/07/17 another meeting held in between villagers and concern authority that proposed NEA should coordinate with concern committee when proceeding construction work. The sub-station construction land confiscated by the NEA is situated in between Ghelanchowk and Odar village. Landowners from these two villages caused all the villagers to engage in this issue. Gurung, Ghale, and Dalit are the indigenous people of these two villages sharing common language, culture, beliefs and value system. Since this homogeneity caused successful resistance against NEA to confiscate their land and able to get fair market value price of their land. In my conversations with landowners about price of the land they have received from the NEA all the landowners are happy. This homogeneity shows that collectivity matters and have strong agency. R= Researcher, RP= Research Participant R: why did you provide this land to NEA? RP: Since it is a matter of development after calculating all plus and minus we landowners and villagers agreed to provide land to NEA. R: What was the initial process of agreement between NEA and landowners to provide land? RP: Initially NEA published notice regarding required land in our area for sub-station construction process and also NEA representatives visited our village. After series of discussion between land owners and villagers landowners formed the concerned committee and set the price of land 10,00000

(ten lakh rupees) per aana. R: what was the NEA's first negotiation regarding price of the land that landowners set? RP: After series of discussion and meeting landowners reached to the point where they are agreed to provide land if they get price of 10,00000 rupees per ropani after paying gain tax by NEA. R: Was 10 lakh rupees per ropani good money for land provided to NEA? RP: yes it is, since we have provided agriculturally less used land to NEA the price received from NEA is good and all landowners are happy with that price. R: What factor played important role to determine price of your land? RP: Collectivity, we all landowners and villagers conducted meeting multiple time and we work through collectivity rather than individual decision. All landowners decided to provide land to NEA only after getting fair price of their land. This conversation with one of the leading figure of concern committee from Ghelanchowk village shows that being homogenous and collective action from village have generated agency to get fair market value of their land confiscated by NEA. Contestation on change and preservation of traditional institutional practices: Constitutions of the Nepal guaranteed private property rights to the property owners and free mobility within the country. But, in this mountain community of Nepal it is traditional institutional practices that alter constitutional provision in practice by enforcing customary laws. It is not free from dispute among and between people both living in the village and outside village. Keir Martin (2007) on chapter three 'land, customary and non-customary, in East New Britain' from book titled 'customary land tenure registration in Australia and Papua New Guinea' shows, "after disaster many Matupi people of Papua New Guinea moved to a resettlement area at Sikut, Sikut residents told Keir Martin that 'the land at a Sikut was better than Matupit land, not because it was more productive or plentiful, but it was not 'customary' land. They described themselves as being 'free' from problems associated with customary ground (p.40). There are many people in Manang village who see customary practice in today's time is hindrance for economic freedom. There are silent tensions between landowners and custom of the village regarding freedom of land sell, mortgage and bequeath. But system and institutions of village prohibited this sell, mortgage, and bequeath of land to the non-hyulba. There are two opposing voices of for and against of this traditional institutional practice and custom of the village. A 45 years male from Manang village shares his opinion regarding land selling rights "I have a land registration certificate of my land neither I can build structure on this land nor sell, mortgage and bequeath my private land to any outsider even they pay good money to my land. This is total control of our private properties by the system of the village restricting our economic opportunities in many ways which is frustrating for me and my family." (Personal communication October, 2018). On the other hand 36 years old male who is leading youth of the village shares his view on local institutions and custom of the village on management of private and communal property. As he goes on saying "history of this place goes back to our forefathers who conquered this place with their hard work and dedication. We inherited this place from our previous generations and whatever resources we are using for our economic prosperity in this place are gift from our forefathers. It is our

moral obligations and duty to prevent this place, culture, and resources from any external intervention. We need to handover this place, culture and resource to our coming generation. Therefore, we have so much connection and affection to this place and the preservation of such valuable gift of our forefathers' traditional institutions, customary practices and overall system of the village is very important" (Personal communication November, 2021). These two opposing views and voices of local inhabitants from same village shows that the custom, practice, and role of traditional institutions may affect people in different ways and people see role of such institutions on individual basis even though they are sharing common socio-cultural ties and homogeneity. It is recorded that important role of traditional institutions in the past and present is noticed among and between people of village and people living in the cities. There are tensions going on from last decades or so regarding control and governing system of traditional institutions in the village that has control over individual and collective lives of the people since long distant past. There are many people specially young generations who have acquired good education are raising their voices that flexible investment opportunity in the village should provide by this traditional institutions because time has changed and the tourism business opportunity have opened avenue to change our economy in prosperous way by investing more. On the other hand there are many people from the village and particularly older generations who have seen and lived hard life in the past are raising voice that non-flexibility to enter people from outside is the only way to protect village and limited resources that they have in back home. If they allow investing money by external investor money will take by this investor and locals will have to struggle to compete with them. "Our forefathers have preserved resources, culture, and place for us and now our turn to preserve this place and resources for our coming generations. Therefore, we will not allow any other people than the people of this village to enjoy our resources that is hard earned and made by our forefathers" (Tashi Gurung, 37). There are people who are for and against this customary practices and institutional practices of the village. In October 2021, I had a conversation with the group of youths running tourism business in Manang about pros and cons of implementing customary practices he shares his experience in this way

R: could you elaborate me in details about hyulba system RP: Hyulba system practice is established by our forefathers to govern the village in the past and it is still practicing by our generations to maintain and govern village in our own local ways. This is how hyulba functions to control and govern the people and village. R: Despite of having formal state laws, rules, and regulations why Hyulba system is still in practice? RP: State laws, rules, and regulations are important in its own way but what we believe is that since we are the original inhabitants of this place and our system and practice are more rely on our traditional practices and institutions we are comfortable with this customary practices and it is straight forward and effective for us to maintain system of the village rather than looking at complex laws of the state. R: If anyone want to buy and sell land and property here what are the processes? RP: According to our traditional institution like hyulba, aama and mitheba no one is allowed

to sell land and their property to the outsider and there is a no such case of buy and sell of land and property to the outsider till date in Manang village. R: Could you further elaborate on this why people are not allowed to sell land and property to the outsider? RP: Our forefathers established this place with their hard work. During their first settlement in here they had limited resources and limited production. Therefore, they had practiced to preserve land by protecting not to sell land to the outsiders and since then we have followed this system and practicing it. R: Don't you think this system interfere individual liberty? RP: I don't think so, because this place exist today because of our forefathers hard work and system they have established. If they did not control this place in the past then situation would be different today. They have preserved resources and culture for us and now we have to think in same way to preserve and handover this to our future generations. You know the value of your place when you understand the past history of this place. If you look at the difference between people living in the village now and those people born in the cities and abroad have different views on this land. We are on a mission of saving village, culture, resources, and people of this land. Our current existence past history embedded in this place therefore, rather than looking at individual freedom we are working on collective benefit of the inhabitants of this village so they can enjoy resources we have here inherited from our forefathers and handover to the next generation. I had another conversation with 45 years old male running clothing business in Kathmandu about customary practices of the village He shared his stories to me, "I have two kids, doing business in Kathmandu is challenging these days. I want to go to the village, build a hotel and run a tourist business but I have a big problem to use my own one ropani land. My land is in central location of the village where villagers celebrate ne (horse racing festival in every November) festival once a year therefore, villagers have set the rules that no permanent structure should be built in this private land. I am waiting days that with new rules and regulations of the state I can build hotel in my land and run a business." In total more than 10 plot of private land there in prime location of the village where no permanent fence and structure were built. People use this land for vegetations in the spring and summer and empty in the winter. This land is not confiscated permanently by the hyulba but without the consent of the hyulba landowners cannot build a structure in this land. With the right of ownership of individual this lands are controlled by the villagers for the collective festival. Conclusion: We have so far discussed the value generation of land by local people. The common institutions of village Hyulba controls over private lands in order to maintain total system (social, cultural, economic, political and environmental) of the village that prevents outsider people, group and state intervention to their place and properties. This prevention mechanism is maintained by customs, traditions and local institutional practices of the village. Such practices have generated local agency that prevents village and its people. Therefore, in order to comprehend the concept of private property, social, economic, geographical mobility we need to understand true role of socio-cultural practices of people and traditional institutional practices that has shaped present condition in the place. The nature

of society and its socio-cultural practice, value and belief system are important factors to consider in order understanding concept of private property, mobility, and power structures. The concept of private property and management differs according to people, place, and culture. The current practices of private property management are historically evolved through different political, economic, social, and cultural system. Traditional institutions play crucial role to preserve and manage private property and resources and has effect on total way of life of its inhabitants. Controlling one's life through customary practices and traditional institutions it has both strength and weaknesses that brought consequences on people's social, geographical, and economic mobility. Being a homogenous community and sharing common belief and value system works more for collective benefits rather than the individual benefits. Individual with greater political and economic power enjoy the privilege to control and govern people and influence overall system of the village. Anthropologists pay close attention to the cultural components (Caplan, 1970) in order to understand social changes. These social changes include economic and political change of any given society that is only possible doing long term fieldwork and participant observation and recording lived experiences of the people.

Special References

- Thakurprasad Koirala (1981). Manang. Nepal Rajkiya Pragya-Pratisthan, Kamaladi, Kathmandu.
- Province government policy and planning commission (2018). Gandaki pradeshko sthitipatra Paush, 2075. Province government policy and planning commission Gandaki province, Pokhara
- Regmi, M. C. (1971). A study in Nepali economic history. Adroit Publishers.
- Regmi, M. C. (1976). Landownership in Nepal. Adroit Publishers.
- Regmi, M. C. (1978). Thatched huts and stucco palaces: peasants and landlords in 19th-century Nepal. Adroit Publishers.
- Caplan, L. (2013). Land and social change in east Nepal: A study of Hindu-tribal relations. Routledge.
- Guinea, P. N. Customary Land Tenure and Registration in Australia and Papua New Guinea.
- Quinn, J. R. (2014). Tradition?! Traditional cultural institutions on customary practices in Uganda. *Africa Spectrum*, 49(3), 29-54.

References

- Acharya, K. P. (2002). Twenty-four years of community forestry in nepal. *International forestry review*, 4(2), 149–156.

- Banerjee, P. (2006). Land acquisition and peasant resistance at singur. *Economic and Political Weekly*, 4718–4720.
- Caplan, L. (1967). Some political consequences of state land policy in east nepal. *Man*, 2(1), 107–114.
- Cox, T. (1990). Land rights and ethnic conflict in nepal. *Economic and Political Weekly*, 1318–1320.
- Dhakal, S. (2011). Land tenure and agrarian reforms in nepal. *Community Self-Reliance Center: Kathmandu, Nepal*.
- Guo, X. (2001). Land expropriation and rural conflicts in china. *The China Quarterly*, 166, 422–439.
- Joshi, M., & Mason, T. D. (2007). Land tenure, democracy, and insurgency in nepal: Peasant support for insurgency versus democracy. *Asian Survey*, 47(3), 393–414.
- Karki, A. K. (2002). Movements from below: Land rights movement in nepal. *Inter-Asia Cultural Studies*, 3(2), 201–217.
- Kenney-Lazar, M., Suhardiman, D., & Dwyer, M. B. (2018). State spaces of resistance: Industrial tree plantations and the struggle for land in laos. *Antipode*, 50(5), 1290–1310.
- Koirala, B. P. (1987). Economics of land reform in nepal: Case study of dhanusha district [tarai areas]. *Natural Resource Management Paper Series (Nepal)*.
- Levien, M. (2013a). The land question: Special economic zones and the political economy of dispossession in india. In *The new enclosures: Critical perspectives on corporate land deals* (pp. 327–364). Routledge.
- Levien, M. (2013b). The politics of dispossession: Theorizing india’s “land wars”. *Politics & Society*, 41(3), 351–394.
- Levien, M. (2015). From primitive accumulation to regimes of dispossession: Six theses on india’s land question. *Economic and Political Weekly*, 146–157.
- Nepal, P., Khanal, N. R., Zhang, Y., Paudel, B., & Liu, L. (2020). Land use policies in nepal: An overview. *Land Degradation & Development*, 31(16), 2203–2212.
- O’Brien, K. J. (2013). Rightful resistance revisited. *Journal of Peasant Studies*, 40(6), 1051–1062.
- O’Brien, K. J. (1996). Rightful resistance. *World Politics*, 49(1), 31–55.
- O’Brien, K. J., & Li, L. (2006). *Rightful resistance in rural china*. Cambridge University Press.
- Regmi, M. C. (1976). *Landownership in nepal*. Univ of California Press.
- Scott, J. C. (1977). The moral economy of the peasant. In *The moral economy of the peasant*. Yale University Press.
- Sharma, K., & Khanal, S. (2010). A review and analysis of existing legal and policy issues related to land tenure and agriculture in nepal. *Kathmandu University Journal of Science, Engineering and Technology*, 6(2), 133–141.

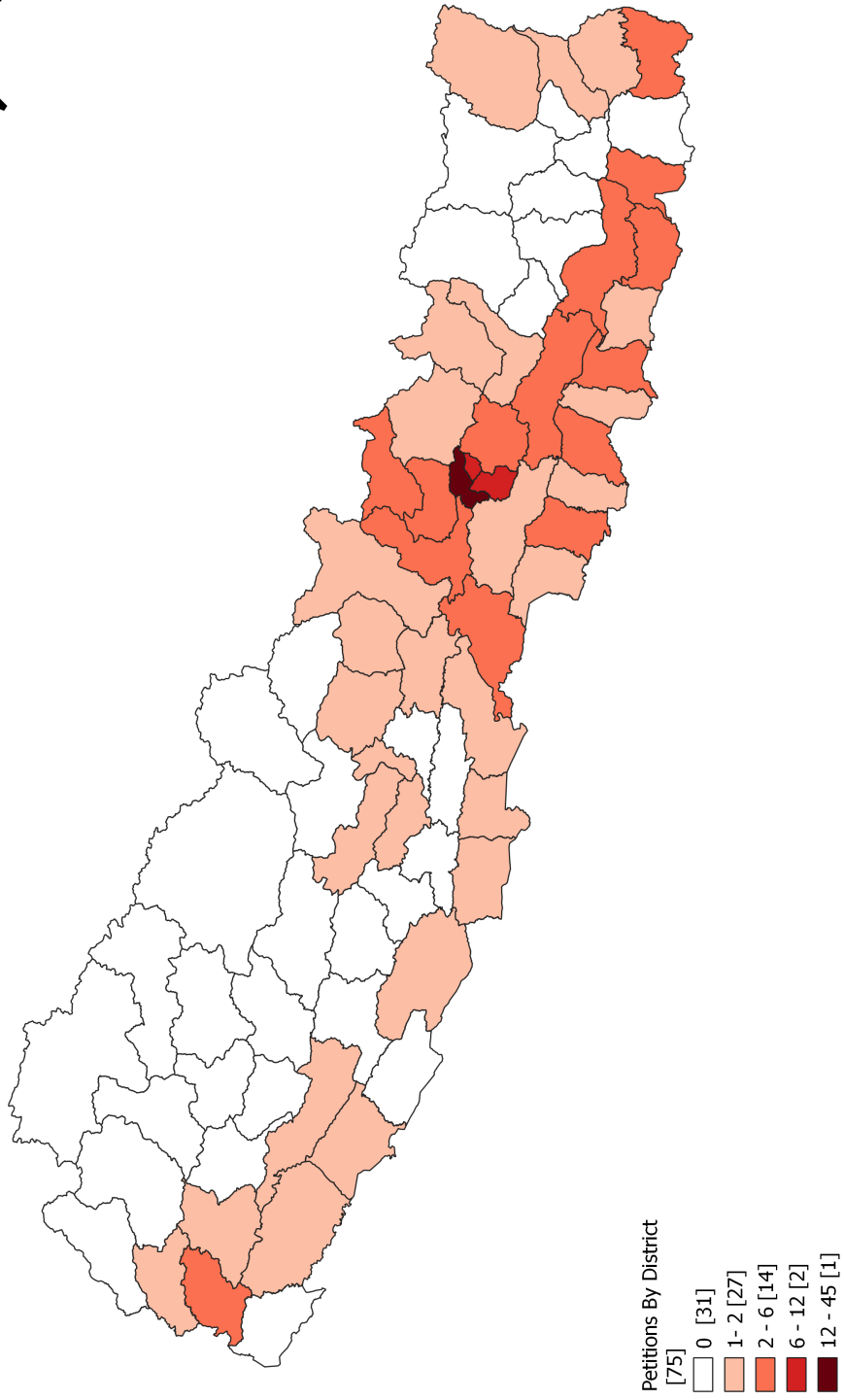
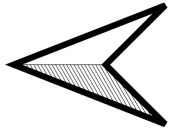


Figure 1: Number of Petitions by Districts