# EXAMINING A RIGHTS BASED APPROACH TO THE DEVELOPMENT OF THE EX-KAMAIYAS OF WESTERN NEPAL

SHIVA LAL SHARMA BHUSAL

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on

June 3 , 2004

.....

Mr. Shiva Lal Sharma Bhusal

Candidate

.....

Mr. Iljas Baker, M. Phil.

Chair

.....

Mr. Mike Hayes, Ph.D.

Thesis Defence Committee

.....

Mr. S. Parasuraman, Ph.D.

Thesis Defence Committee

.....

Assoc. Prof. Rassmidara Hoonsawat, Ph.D.

Dean

Faculty of Graduate Studies

Mahidol University

.....

Assoc. Prof. Rassmidara Hoonsawat, Ph.D.

Dean

Faculty of Graduate Studies

Mahidol University

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.....

Mr. Shiva Lal Sharma Bhusal

Candidate

.....

Mr. Iljas Baker, M. Phil

Major advisor

.....

Mr. Mike Hayes, Ph.D.

Co-advisor

.....

Assoc. Prof. Rassmidara Hoonsawat, Ph.D.

Dean

Faculty of Graduate Studies

.....

Ms. Sriprapha Petcharamesree, Ph.D

Chair

Master of Arts Programme in

Human rights

Faculty of Graduate Studies

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Shiva Lal Sharma Bhusal

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SHIVA LAL SHARMA BHUSAL 4537161 GRHR/M

M.A. (HUMAN RIGHTS)

THESIS ADVISORS: ILJAS BAKER, M.Phil, MIKE HAYES, Ph.D.

ABSTRACT

Although the Nepalese government outlawed slavery in 1926, it has persisted in different forms. One of them is known as the Kamaiya system of agricultural bonded labor. In 1994 the government recognized its existence and in 2000 a government decree annulled the debts of Kamaiyas and declared the system illegal and punishable by law.

This thesis explores the government's development initiatives towards the ex-Kamaiyas and examines whether these initiatives are compatible with a rights based approach to development. A conceptual framework of the rights based approach was used to frame the field research.

The research concludes that though the declaration complies with the right to freedom, the government programme to rehabilitate the ex-Kamaiyas through providing land is inadequate: a large number of ex-Kamaiyas are yet to receive their legal land entitlement as they were left out of the initial survey to identify bonded laborers, and a group of ex-Kamaiyas declined to accept government entitlement. The development initiatives lack ex-Kamaiya participation and are not in accordance with the principle of a rights based approach to development. A large number of ex-Kamaiyas are still suffering poverty and rights abuses. The findings of the research further show that a new exploitative system has emerged called *Jirayat* that has elements similar to that of bonded labor, namely very low or no wages and unlimited working hours.

KEYWORDS: BONDED LABOR/ NEPAL/ KAMAIYAS/ HUMAN RIGHTS/ RIGHTS BASED APPROACH TO DEVELOPMENT.

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# LIST OF ABBREVIATION

| | |
|---|---|
| AIN | Association of International Non-Governmental Organization |
| BASE | Backward Society Education |
| CRC | Convention on Rights of Child |
| CEDAW | Convention on the Elimination of All Forms of Discrimination Against Women |
| CERD | Convention on Elimination of Racial Discrimination |
| DDC | District Development Committee. (An elected district governing body) |
| DEO | District Education Office |
| DFO | District Forest Office |
| DHO | District Health Office |
| DLR | District Land Reform Office |
| ECOSOC | Economic and Social Council |
| ESP | Enabling State Program |
| FKRMC | Freed Kamaiya Rehabilitation and Monitoring Committee |
| GEFONT | General Federation of Nepalese Trade Unions |
| HMG | His Majesty's Government |
| HDR | United Nations Human Development Report |
| ICCPR | International Convention on Civil and Political Rights |
| ICESCR | International Conventions on Economic Social and Cultural Rights |
| ILO | International Labour Organization |
| INGO | International Non-Governmental Organization |
| I/NGO | International and National Non Government Organization |
| INSEC | Informal Sector Service Centre |
| KCG | Kamaiya Concern Group |
| KLF | Kamaiya Liberation Front |
| KLPA | Kamaiya Labour Prohibition Act |
| LDO | Local Development Officer |
| NGO | Non Government Organization |

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# LIST OF ABBREVIATION (cont.)

| | |
|---|---|
| NFE | Non-Formal Class |
| ODI | Overseas Development Institute |
| MLR | Ministry of Land Reform |
| MLSW | Ministry of Labour and Social Welfare |
| MS-Nepal | Mellemfolkligt Samvirke (Danish Association for International Cooperation)-Nepal |
| NR | Nepalese Rupee (currency) |
| PRIA | Participatory Research in Asia |
| RBA | Rights Based Approach |
| RRN | Rural Reconstruction Nepal |
| SLC | School Leaving Certificate |
| SPACE | Society for Participatory Cultural Education |
| SC-US | Save the Children (United States) |
| SSSA | Sulkumbasi Samasya Samadhan Ayog |
| UDHR | Universal Declaration of Human Rights |
| UNDP | United Nations Development Program |
| UNICEF | United Nations International Children Emergency Fund |
| OHCHR | United Nations/Office of the High Commissionor for Human Rights |
| VDC | Village Development Committee/Elected governing body for afround 3000-5000 population. |

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# CHAPTER 1
# INTRODUCTION

## 1.1 Introduction

This thesis examines the comprehensive rights of former bonded laborers (called Kamaiyas) in Nepal from the perspective of Rights Based Approach (RBA) to development. The Kamaiya system was a form of slavery in which thousands of families were bound in a traditional system of bonded farm labor to pay off debts owed to landlords. These bonded laborers belong to the Tharu ethnic group. The debts of Kamaiyas increased every year with the application of compound interest and those who missed a day's work had a fine automatically added to their debt. Official statistics report that 98 percent of Kamaiyas were landless and only four percent were literate (ESP, 2001: 25). More than 95 percent of the Kamaiyas belong to the Tharu community. The Tharus are one of the major indigenous ethnic groups in Nepal comprising 6.5 percent of the total population of the country (22 million) as indicated by the population census of 1991.

In Nepal slavery and bonded labor was officially abolished in 1926 by the Rana ruled autocratic government. In January 1963 Nepal ratified the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956). However, slavery was still common up to the year 2000, taking the form of debt bondage or bonded labor. It was July 2000 a government decree declared the Kamaiya system, illegal and punishable by law, that was prevalent in five districts of Mid and Far Western Terai (low land) of Nepal. Though there exists other forms of bonded labour also in the country, the government decree was only applicable to the Kamaiya system (the term used for agricultural bonded labour in Western Nepal). The Kamaiya's freedom was an outcome of a concerted effort of the Kamaiya movement supported by NGOs, civil society, and rights activists that continuously got nationwide media coverage (Karki, 2001: 106). The declaration made null and void all debts that the Kamaiyas owed to their landlords who were also their employers. With this declaration the Kamaiyas are

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now known as ex-Kamaiyas and are to be no more bonded, theoretically. In the rest of my thesis the local term 'ex-Kamaiya' is used to describe the former bonded laborers in the context of Nepal.

A survey conducted by Ministry of Land Reform of HMG in 2001 identified 19,863 ex-Kamaiya households in five districts (Kailali, Kanchanpur, Dang, Banke, and Bardiya)[1]. The survey reveals that Bardiya has the highest number of ex-Kamaiya families (6,949). Located in Mid Western region of Nepal, the ex-Kamaiyas settlements of Bardiya are my research area. This district has an area of 2025 sq km and a total population of 382,649 (2001 census) of whom 52% are Tharus. About 60 % of the district is covered by forest largely due to a national park which itself covers 43 % of the district area (EFP, 2003: 7).

It is now nearly four years since the ex-Kamaiyas have been declared freed. The size and complexity of the ex-Kamaiya problem differs from district to district. Compared to other affected districts, many ex-Kamaiya families of Bardiya are still struggling to receive official ex-Kamaiya status, that is, an identification paper stating that they are the ex-Kamaiyas. Receiving ex-Kamaiya status is necessary for land entitlement and other services provided by the government.

Reports from development agencies, media and Kamaiya-related publications have told the ex-Kamaiyas' story of struggle and frustration; the humble life while working for the landlord; the freedom movement; the liberation; the life as displaced person after the movement, without house and food; the struggle for land and ignorance on claiming their economic, social and cultural rights, such as right to education, right to work and minimum wages, right to housing, and so on.

In 1993, the Vienna Conference on Human Rights affirmed the comprehensive nature of human rights and the close connection between civil, political, social, economic and cultural rights. The Vienna Conference further affirmed the indivisibility of human rights and the Right to Development (a declaration passed by the UN in 1986). All of these changes were brought together in the UNDP Human Development Report, 2000, focusing on human development and human rights. Human rights are provided for in a comprehensive set of

[1] His Majesty's Government, Ministry of Land Reform and Management. Data collected in July-August 2000.

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internationally agreed standards that promote justice, equality, participation and accountability. However, realizing and enforcing these standards has been much more difficult than getting governments to ratify them (Theis, 2003: 2). Development is defined in the preamble of the declaration of the Right to Development as a “comprehensive economic, social, cultural and political process”. It is this comprehensive set of rights that the people should be enjoying. In the context of the human rights of ex-Kamaiyas, those that are necessary for survival and dignified living are the rights to participation, education and access to information; the right to social protection in times of need; the right to work in just and favorable conditions; the right to food and adequate housing, and freedom from slavery and/or servitude.

Human rights are central to developing those aspects essential for human survival, physical security, liberty and development with dignity. As Hausermann states, “securing human rights helps protect people from impoverishment and enables them to develop in accordance with their equal rights and dignity. A society, which excludes any part of its whole membership from participation in its progress, is an impoverished society” (Hausermann, 1998: 33). On Rights to Development Sengupta (UN Human Rights expert) writes, "The Right to Development (RTD-1986) is a process of development which leads to the realization of each human right and of all of them together and which has to be carried out in manner known as rights- based, in accordance with the human rights standards, as a participatory, non discriminatory, accountable and transparent process with equity in decision making in rights and sharing of the fruits of the process" (Sengupta, 2002: 846). In addition to the Slavery Convention, Nepal is also a state party to all big six major international human rights conventions, including the International Covenant on Economic, Social, Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR) and so on.

In the research process this thesis has conceptualized the elements of Rights Based Approach (RBA) to development and examined the government programs and policies for ex-Kamaiyas. The literature on the implication of international human rights’ conventions, documentation on bonded laborers’ rights and documentation of various international and national organizations in Right to Development has been reviewed. Government perspectives on Kamaiya issues are explored from the

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government declaration, the Kamaiya Labor Prohibition Act-2002, and from different governmental programs and polices made for the development of the ex-Kamaiyas. This thesis does not assess the development programs supported by Non-Governmental Organizations (NGOs) and the International Non-governmental Organizations (INGOs). However, it discusses the role of these non-state holders in general as they have been strongly involved in the lobbying and advocating for the freeing of the Kamaiyas.

## 1.2 Statement of Problem

Although the Nepalese government outlawed slavery/bonded labor in 1926, ratified the Supplementary Convention on the Abolition of Slavery, the Trade and Institutions and Practices Similar to Slavery (1956) in 1963, and formed a Commission in 1989 which concluded that there were no slaves, bonded labor has persisted. In 1994 a democratically elected government recognized the existence of the Kamaiya system and bonded labour in Nepal.

In 2001 the bonded labour system was outlawed for the second time and Kamaiya debts were annulled. Since then the government has introduced a program to register ex-Kamaiyas and to provide them with small plots of land. However, a large number of ex-Kamaiyas are still suffering from poverty and right abuses. This thesis addresses the problem on why is there failure in delivering the rights to the ex-Kamaiyas.

## 1.3 Purpose Statement

The purpose of this research is to assess the government's policies and programs for ex-Kamaiyas from the perspective of a Rights Based Approach to development.

## 1.4 Research Questions

1.4.1. How does the Rights Based Approach (RBA) apply for the development of the ex-Kamaiyas?

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1.4.2. How do the government's development programs and policies fail to their intended purpose to secure the rights of the ex-Kamaiyas?

1.4.3. In what ways are the government's approaches to the development of ex-Kamaiyas, as manifested in its programs and policies, similar to, or different from a RBA to development?

1.4.4 What changes would be necessary in government planning if a Rights Based Approach to development for ex-Kamaiyas were to be implemented?

## 1.5 Significance of Research

The findings of the research will contribute to the vulnerability of the application of Rights Based Approach to development on programs and policies related to disadvantaged groups like ex-Kamaiyas. It will further contribute to raising the awareness and knowledge of vulnerable groups who are the subject of the government programs and policies. Further the thesis will foster an understanding of the ongoing development process in the context of the bonded laborers, their struggle for ensuring rights, and better livelihoods. It will mainly contribute knowledge to the following groups: government authorities, development agencies, and NGOs supporting Kamaiya programs.

The researcher has no knowledge of any research that has been conducted on Rights Based Approach focusing on this vulnerable group after the Kamaiya system was outlawed. However, a number of studies and few research works have been carried out on the Kamaiya system especially after re-instatement of democracy in 1990.

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# CHAPTER 2
# RESEARCH METHODS

In this study the researcher has adopted a qualitative research method. He started with literature review to develop a research approach and a conceptual framework for studying the Right Based Approach to development. A field study in Bardiya district of Western Nepal was conducted from 15 July 2003 to 20th. August 2003 using the tools for data collection such as: focus group discussions, meetings, interviews and observation of the ex-Kamaiyas settlements. To verify the information of the field interview and focus group discussion the researcher has also contacted the government authority, Land Reform Officer from Bardiya district.

## 2.1 Selection of the Study Areas and Sampling Strategy

The targeted population ex-Kamaiyas are living in five districts (Dang, Banke, Bardiya, Kailali and Kanchanpur) of Mid and Far Western Nepal. According to a government survey the population was 19,863 households in 2001. The government data also shows that the largest numbers of ex-Kamaiyas family are in Bardiya district (6,949) followed by Kailali (6,329). The government statistics further reveals that in Bardiya out of 6,949 families 3,155 were landless, 1,119 having home but landless, 1,020 having two kattha[1] of land and house and 1,655 other Kamaiya households[2]. The worst level of ex-Kamaiyas (both landless and homeless) are in Bardiya district (Karki, 2001: 77).

Among the reasons for choosing Bardiya district was the complexity of the problem and the high number of ex-Kamaiyas in that district. An additional 9,400 families are struggling to get an ex-Kamaiyas status in Bardiya alone. Bardiya was also easily accessable by public tranport, and not too distant. Given the present volatile security situation of Nepal with the insurgency the risk in Bardiya was

[1] Nepali terminology for a measure of piece of land approximately 1/30 of a hectare
[2] His Majesty Government, Ministry of Land Reform and Management, Data collected on July-August, 2000.

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relatively low compared to other Kamaiya affected districts like Kailali in Far Western region.

**Selection of settlements and village**:

After the government declared the ex-Kamaiyas free, they have moved into settlements. There are mainly two types of settlements: permanent and temporary. Permanent ones are the legal settlements provided by the government. Temporary settlements are those where the ex-Kamaiyas in groups have encroached on public land and are waiting for the government to recognize them. Some of the ex-Kamaiyas did not move to the government entitled land because the land is either far away from their existing places, not fertile, located near to flood prone area, or they are content with their old land owner. GEFONT a trade union organization working on the Kamaiya issue reports that 5% of the total number of ex-Kamaiyas have chosen to stay behind (GEFONT, 2001: 7). All these three types of Kamaiyas lived in the field study area.

## 2.2 Study areas :

Three permanent settlements (Janatanagar, Shantinagar and Jainpur), two temporary settlements (Lohungwa and Bangai) and one village called Rajapur where the ex-Kamaiyas choose to remain. The ex-Kamaiyas from Rajapur did not accept government entititlements.

**Permanent settlements**:

Janatanagar, Shantinagr and Jainpur are the permanent settlements selected for study. These three settlements are located in three different areas. They vary in location, in size (population), land ownership (entitlements) and types of ex-Kamaiyas.

Shantinagar

Shantinagar is one of the biggest permanent settlements with 125 households. The ex-Kamaiyas settled there previously had no land holdings. It is considered one of the better organised settlements located near the East-West

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National Highway. The ex-Kamaiyas houses are better compared to others. It is far from the district headquarter (Gularia). It is relatively easy to access by public transportation. Here every ex-Kamaiyas family is entitled three kattha of land by the government program. The average size of a Kamaiya family is 6-8 persons in this settlement. Five ex-Kamaiyas, three men and two women were interviewed from Shantinagar.

Jainpur

Jainpur is a small settlement with 25 households located near the Bardiya National Park, which is a remote forest area. From the perspective of government land entitlement there exists variation in this settlement. Fifteen households are entirled two kattha of land wheras ten houses are entitled four kattha. From this settlement two women (one from each group ) were interviewed.

Jantanagar

Jantanagar is smaller than Shantinagar, but bigger than Jainpur. It has 95 households and is located near the district headquarters. Every household is entitled to five *kattha* of land. Previously they had no land holdings. In this settlement, three ex-Kamaiyas, one man and two women, were interviewed. A focus group discussion was also conducted in this settlement.

**Temporary Settlements:**

Lohungwa and Bangai were the temporary settlements selected for field study.

Lohungawa

Lohungawa is a remote settlement surrounded by forest. It is one of the biggest temporary settlements. It has 375 households. It is divided into three small villages. Groups of ex-Kamaiyas encroached land themselves and settled here. They are waiting for the government to recognize them as ex-Kamaiyas and legalize the land they are entitled to. The ex-Kamaiyas living here are a mixed group, according to settlement leader Sundar, the group has appropriated around five katthas of land per household. In this settlement, three men and one woman were interviewed.

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Bangai

Bangai is another temporary settlement with 85 households. It is located near Shantinagar permanent settlement. It was selected in order to get a good comparable picture of development among temporary and permanent settlements in nearby areas. Here the ex-Kamaiyas have encroached on three to four katthas of land per household and are waiting for the government to recognize them. In this settlement three women and one man were interviewed. A focus group discussion was also conducted there.

Rajapur (An old village)

Rajapur located 70 km west from district headquarters is not a recently established settlement, but an old village with 250 households of farmers and ex-Kamaiyas. The land here is fertile. Many ex-Kamaiyas of this village rejected the government entitlements because the government entitlements were far from the place where they are living and infertile too. They have rather chosen to pay back the "annuled" debt and decided to cultivate the landlowners land in various types of exploitative forms. Among them two young men were interviewed.

## 2.3 Sample Size

As far as possible the ex-Kamaiyas interviewed were selected from different set-ups and of different capabilities such as ex-Kamaiyas's leaders from the traditional system, ex-Kamaiyas representative in District Kamaiya Rehabilitation and Monitoring Committee and leaders from permanent and temporary settlements, and ex-Kamaiyas men and women of different age and educational level from various settlements and village. Twenty ex-Kamaiyas from the above settlemetns were selectd for interviewees (see appendix-B for details). Similarly two focus group discussions were also held one each in temporary and permanent settlement. Each focus group conists of 15-20 ex-Kamaiyas men and women (see appendix-C for details). As far as possible an equal representation of men and women was ensured. An ethnographic observation of settlements and informal discussions with the *Badghar*s[3] was helpful in

[3] Badghar is a Tharu terminology used for their village leader.

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understanding the settlement setups and for identifying persons to approach for interviews and for participation in focus group discussions. The focus group discussions were conducted in community centers (a thatch roofed house). The interviews were held in different places, like under a tree in one corner of the settlements sitting on the grounds, in tea shops and in homes of the ex-Kamaiyas.

## 2.4 Data Collection

**(a) Document Research**

Collection and scrutiny of the secondary sources began from the very start of the research period. Review of the secondary data has been a major source for grounding the theoretical framework and very much relevant to the approaches of fieldwork and the development of a research methodology. I have consulted the following kinds of secondary sources.

(a) Human rights journals, books, contemporary articles on Rights Based Approach, reports of National Human Rights Commission (Nepal) and the UN Human Rights Committee (especially ICESCR) and government decisions.

(b) Documents relating to ex-Kamaiyas development programs of the National Planning Commission, international development organizations working in Nepal for the development of ex-Kamaiyas and planning documents related to Kamaiya program from the Ministry of Land Reforms (MLR).

(c) Bardiya district-based government line agencies' documents, NGOs program and progress reports related to Kamaiyas development were also reviewed to identify and analyze Kamaiya programs, their participation process and implementation strategies.

(d) Case studies and other such relevant documents and documentation from Kamaiya civil society organizations (in this case community based organizations of ex-Kamaiyas).

(e) Reports of Amnesty International, Human Rights Watch, Anti Slavery International, Action Aid, and Oxfam.

(e) Information available on the websites on RBA and ex-Kamaiyas development.

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(f) Chronological review of media articles and reports helped to establish critical timelines of events. Related media websites were helpful for this. However, from the start of the review process, the researcher also maintained a file containing cuttings and documentation of relevant material published by the media.

The study of secondary sources has helped the researcher to critically look at the RBA approaches and develop a conceptual framework and guiding principles for conducting this research.

**(b) Field Study**

Fieldwork was primarily focused on gathering qualitative data through interviews, focus group discussions and direct observation of the ex-Kamaiyas' settlements in Bardiya district. For the field study, the researcher went to the villages and settlements where the ex-Kamaiyas are living. As mentioned earlier semi-structured interviews were undertaken with both men and women. The researcher spent 32 days in Bardiya district. During this period the researcher visited and interviewed the ex-Kamaiyas from the settlements Lahungawa, Bangai, Shantinagar, Janatanagar and Jainpur as well as an old village called Rajapur. Care was taken to ensure that interviews were held in their leisure hours and at their convenience.

The proposition developed in the process of the literature review: Good Governance, Participation/ Empowerment and Non-discrimination were the guiding principles that formed the basis for focus group discussions and field interviews. Organizing male/female ratio, age group a limited number of relevant informants for the focus group discusson and interviews took considerable time. The researcher found lodges (Bhurigaon, Gularia) some five kilometers away from the settlements. However in places where there were no lodges the researcher was offered to stay in ex-Kamaiya houses in settlements. To ensure the effectiveness of the focus group discussions and interviews the researcher and his assistant developed contacts through *Badghar* i.e headman (gatekeepers) of the settlements.

Nepali and Tharu languages were the language used for communication. Nepali (national language) is widely spoken in the research area like in many parts of Nepal. Though the Tharu indigenous group (to which the ex-Kamaiyas belong) has

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their own mother tongue called "Tharu", Nepali is also accepted as language of common parlance. The researcher is able to understand Tharu language and has reasonable command over speaking it as well. However, to avoid any difficulties in communication the researcher used a local Tharu man as an assistant. The assistant was equally competent in speaking Nepali too. The assistant was not a translator or a note taker but more of an icebreaker and for clarifying the misunderstanding and confusions. The researcher also used voice recorder to record interviewees and focus group discussion with the permission of the members in focus groups and interviewees.

**In-depth Interviews**

Beyond the broad objective of description, conceptual development and the testing of concepts, qualitative interviewing plays a vital role in combination with other methods. Insights gained from qualitative interviewing improved the quality of interpretation of the phenomena being studied (Gaskell, 2000: 38). The main purpose of the gathering data was to identify and analyze critically the government's policy and programs related to the ex-Kamaiyas. In particular it was to investigate in what ways the government approach to the development of ex-Kamaiyas was manifested in its programs and policies, and whether this approach is similar to or different from a RBA? The primary data collection was concentrated on identifying to what extent the Kamaiya program and policies and the outlawing of the system has had an effect on the comprehensive rights of ex-Kamaiyas such as right to housing, land titles or deeds, right to education, minimum wages, voting and citizenship. The more in-depth understanding offered by qualitative interviews provide valuable contextual information to help to explain particular findings.

Interviews with twenty ex-Kamaiyas[4] were focused on their role in decision-making process on programs and policies related to their development. Available mechanisms to protect their rights, and their access to the system and authorities to claim their rights were also explored. Non-discrimination aspect was also a major

[4] Names and location details of interviewees are presented in Appendix-3

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issue in the interviews. A semi structured questionnaire was designed before carrying out the field interviews. Additional questionnaire were asked depending on the responses to prepared questions.

The researcher used notepads and tape recorder for recording the data. To record the interviews the interviewee's consent was sought. At the end of the day every evening the researcher and his assistant sat together to compile, clarify and scrutinize the recorded data.

**Focus group discussion**

Like the interviews the propositions developed in the process of literature review: participation, non-discrimination and good governance (focused on government responsibility) were the general guiding themes for focus group discussions too.

To conduct focus group discussions one permanent (Janatanagar) and one temporary (Bangai) settlement were selected. The reason for selecting two different settlements was to compare and contrast the development process in two different set of settlements among the same group of people. In the Bangai, focus group discussion there were 14 people (six women). All of them were above 20 in age. Similarly in Janatanagar settlement there were 19 participants (13 women). Here also the age group was above 20 and they were all ex-Kamaiya s from the Tharu indigenous group.

People in focus groups spoke openly. It did not take a long time to open up on the issues. The research assistant was very good in opening up the discussion in Tharu with opening introduction and some jokes. There was a close contact with the group as they were happy to hear a Tharu speaking researcher (though partially) as well. The focus group discussion provided an opportunity for participants to discuss the issues among themselves. Many new issues were explored during the discussions.

In the beginning the groups were shy especially the women, but later they opened up. All the dissenting ideas, opposing views and how they reach a conclusion were noted carefully. At the end of the discussion, the conclusions were shared with the groups for their agreement and approval. These approved ideas were then taken as the groups' position. This helped facilitate the analysis.

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**Non-Participatory Observation**

The non-participant observation method was used to observe the features of settlements, people's life style, their expressions and signs. The researcher observed one non-formal education class for adult ex-Kamaiya men and women. This was helpful to get an idea of empowerment activities for the marginalised ex-Kamaiya and Dalit women. At the district level in the Bardiya DDC office, the researcher was given permission to observe and take notes at a meeting of the ex-Kamaiyas Rehabilitation and Monitoring Committee.

## 2.5 Provision for Trustworthiness

The following process contributed to the trustworthiness of the research. The use of multiple research methods such as interviews, literature review, focus group discussion and observation helped in cross-checking the information. Confusion arising from interviews and focus group discussions were cross-checked and clarified while conducting the next interviews or focus group discussion. In the same way, observing meetings was very useful to cross check the issues from interviews and focus group discussions. Findings from the field were also examined against the backdrop of information gleaned from the review of literature and documents.

Looked for both positive and negative outcomes to overcome any researcher's bias in examining the government programs and policies with Rights Based Approach.

## 2.6 Data Analysis

In this phase, the researcher analyzed the data collected from primary and secondary sources. Data collection and analysis were done concurrently.

Processing and analysis of the data began from the first day itself of field research. The process of everyday review and observations helped generate new ideas, thoughts, and the shaping of a concrete hypothesis. During the fieldwork the researcher maintained systematic records in a research diary. At the end of the fieldwork transcripts of the interviews and focus group discussions were written up

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and those were subjected to content analysis. The propositions derived from the literature were used as a template for the content analysis.

## 2.7 Ethical Issues

The researcher is aware of maintaining participants' right to privacy and confidentiality. Principle of professional integrity and the code of ethics of social science research have been followed during the process of data collection and analysis. While conducting the interviews the researcher took consent of interviewees and explained the purpose. The gate-keepers such as the Kamaiya group leaders, the Kamaiya and the local village leaders were informed and their consent was sought.

## 2.8 Limitations of the Study

1. The sample size is very small and purposive therefore no statistical generalization is possible.

2. In Nepal only a very limited number of documents are available on application of Rights Based Approach to development

3. Due to the ongoing Maoists insurgency and counter actions of government forces, organizing focus group discussions in interior settlements was difficult, as such discussions may have led to security officials suspecting that an underground activist was contacting the villagers. Therefore, focus group discussions were conducted in the settlements located near highways and district headquarters.

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# CHAPTER 3
# KAMAIYA SYSTEM AND DEBT BONDAGE

## Kamaiya System and Debt Bondage

The Kamaiya system is a system where a long-term exploitative farm labor relationship exists between the Kamaiya (agricultural bonded laborer) and the employer. Under this system, a Kamaiya agrees to work for a landlord on the basis of an oral contract for one year, for a wage, which is generally paid in kind. Compelled by a low family income, the Kamaiya borrows from the employer to meet even minimal consumption expenditures and for emergency requirements. The Kamaiya (debt) keeps on accumulating and the Kamaiya loses the freedom to supplement current income from other sources. The Kamaiya then culminates in a kind of bondage (Sharma, 1998: 6). The above definition states that the Kamaiya receives their wages generally in kind. The amount of grain provided as wage and food to the Kamaiya is not enough to feed them and their family.

The Kamaiya are laborers entirely engaged in cultivation and domestic works under exploitative labor conditions. They are often poor and homeless though some of them may own a tiny plot of land. A Kamaiya has to work approximately about 18 hours a day (Bonded, 1992: 39). In Bardiya district where Pradeshu Chaudhary, one of my informants used to work before his freedom, the local wage rate for labor was NR 60 (US$ 0.80) per day. He said to the researcher, “If I was paid at this rate in few years I would be able to pay back the principal and interest amount of my loan (at 3 percent per month). But I used to receive grains equivalent to NR 6,000-7,000 a year (NR 17 per day, converting into cash)”[1]. So Pradeshu's debt (NR 5,000) accumulated with interest and additional loans that he took to meet some family needs. My field study reveals that in most cases the debt owed by Kamaiyas

[1] Kamaiya receives his wages in kind (grains such as : paddy, wheat, lentils etc.) after the harvest.

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used to be relatively small. Various reports and interaction with focus group suggests that the average Kamaiyas debt ranges from 2,000 -10,000 (US $ 40 -120), but no cash income even this was virtually impossible to repay. The exploitative working conditions under which whole families receive very low wages made the Kamaiyas' situation vulnerable and the Kamaiya and his family became indebted.

According to Robertson and Mishra, "There are many variations of the Kamaiya system, displaying a whole spectrum of exploitation. There are differences according to whether the laborer is in debt or not, and whether the Kamaiya owns his own house or patch of land on which it is built. There is also considerable variation from district to district and landlord in the amount and type of remuneration paid. The most exploitative cases occur when the Kamaiya is both in debt and without land of his own. In this circumstance he is obliged to live on the landlord's property" (Robertson and Mishra, 1997: 19). The Kamaiya s' work continues from young age all through adult life until the Kamaiya is no longer capable of hard labor and so passes on the indebted amount on to his sons.

Generally, landlords require that the Kamaiyas bring their wives and other female relatives for domestic work and other agriculture duties. According to Sundar (one respondent of my field interviews),

"The landlord usually allocates a small plot next to the farmhouse on which to build a shack. If the Kamaiyas wish to leave their landlord, they have to abandon their homes in addition to paying back debts". The female member, whether she is a daughter, in-law, wife or mother is referred to as a Kamaiya. In the Kamaiya system Kamaiya are not parties to the contracts struck by their male partners and the landlord. They do not receive direct remuneration for their work but receive only the daily meal. Sometimes their landlord or his wife may give them old clothes or a length of cloth (Robertson and Mishra 1997: 24). This reflects that within the Kamaiya system women are double victims of servitude. Tharu women, particularly ex-Kamaiya women, like many other Nepali women from other castes, have a subordinate role in family decision making. Their male counterparts lead the family. The worst part is they suffer more, in a different way and context, due to the conservative cultural practices.

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The United Nations Supplementary Conventions on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956) to which Nepal is a state party, defines bonded labor in two broad categories (a) **Debt bondage**: the status or condition arising from a pledge by a debtor of his personal services of those of person under his control as security for a debt; and (b) **Serfdom**: the condition or status of a tenant who is by law, custom or agreement bound to live and labor on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status (Slavery Convention article 1 (a),(b)-1956).

Looking at the definition in the Slavery Convention, it is apparent that the Kamaiya system is a form of slavery because it has both elements of debt and serfdom. Although the system has no legal mandate, prohibited by law, it is in accordance to the existing custom and agreement as the tenant or Kamaiya on pledges bound to live and labor on land belonging to another person, it is serfdom. In addition to this the Kamaiya system has an element of human trade. In some cases another landlord pays all the *Saunki* of a certain Kamaiya in *Maghi* [2](at the time of renewing the annual contract) and brings the bonded Kamaiya family to work in his farm. With the debt transferred from one family to another the whole Kamaiya family gets transferred to another landlord. "This allows for buying and selling of one person by another. It is the only system which allows for the virtual buying and selling of bonded laborers by their landlords in a form of a veiled slave trade" (Robertson and Mishra, 1997: 15).

In Nepal indebtedness appears to have been one of the important causes of bondage since the Gorkhali and Rana regimes in the 18th and 19th centuries. The debtor was compelled to work for the moneylender in the capacity of bondsman. In this, capacity human beings were mortgaged in the same manner as land and other products (Regmi: 117-118). In most South Asian context, the bonded labor system is based on hereditary and long term indebtedness, which entails continuous and exclusive work for one employer until a loan taken in the distant past has been repaid. This bonded labor system is primarily based on the feudal institutional form resting on extra economic coercion (Brass, quoted from Karki: 2001: 65).

[2] Maghi is an important festival celeberated by Tharus in January every year.

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Similar to most South Asian contexts the central feature of the Kamaiya system in Nepal is 'indebtedness'. It causes a poor family to work exclusively for one employer until a loan taken in the past has been repaid. Under this system the unpaid loan that becomes a debt is transferred from one generation to another. So being unable to pay, a Kamaiya family is compelled to work for an exclusive landowner at very nominal wages for unrestricted working hours, for years. Under the tradition of the Kamaiya system the contract that is made 'verbally' can be renewed annually; which means a Kamaiya can change his master after a year if he wishes but he needs to pay all the accumulated debt which is virtually impossible for a Kamaiya family. Researchers claim that many other different forms of bonded-ness exist in the country. Although bonded laborers in Nepal are in various forms and different sectors (industry, households) but the Kamaiya system is particularly related to the agriculture sector only. "Though there has been no survey of the number of people affected by debt bondage, it is estimated that they run into hundreds of thousands: men and women who have mortgaged their working life in lieu of interest of a loan they will never be able to repay" (Robertson and Mishra, 1997: vi).

Domestic legal measurers and the substantial international commitment made by Nepal shows that slavery is not permitted. Looking at the history of government declarations against slavery, it was in 1926 that the then prime minister during the autocratic Rana rule in Nepal officially declared freedom of the slaves. In January 1963 Nepal ratified the UN Slavery Convention (1956). In the domestic law, the *Muluki Ain* of Nepal (the oldest legal civil code) in its tenth amendment (1974), section 11 states, "None shall enslave or undertake bondage to anyone; he or she shall be imprisoned for a period of three to ten years if found guilty."

In spite of all this legal provisions bonded labour existed in Nepal till 2000. The documentation shows that till 1990 the government of Nepal did not recognize the existence of bonded labor system though the anthropologists have pointed on its existence in 1960 already (Bista, 1967: 119). In 1989, the King appointed a commission to look into the Kamaiya system in Far Western Nepal. The commission concluded that there were no slaves there. When questioned by a researcher one member of the commission commented that the Tharu Kamaiyas were ignorant, some

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were lazy and drunkards. If they want to better their life they should work harder (Robertson, Mishra, 1997: 75).

Many researchers claim that the Kamaiya system is also found in other adjoining districts in addition to the five districts (Dang, Banke, Bardiya, Kailali and Kanchanpur) of western Nepal but in different forms and pattern. Notwithstanding, in the five districts of Western Nepal the intensity of the Kamaiya problem is high. Nearly all Kamaiyas belong to indigenous people, the Tharu, who for generations have been victims of the debt bondage system (IWGIA, 2000: 298). The indigenous Tharus lived in peace and plenty before the hill settlers pushed by population pressure descended into their territory. Some writers claim that the new settlers managed to gradually nibble the land and gain legal rights, eventually evicting the Tharus from their own land. The oppression was intensified when hill dwellers moved south to the lowlands, also called the Terai, and, legally or not, acquired large areas of fertile land. This resulted in the Tharu becoming landless and being forced into the position of Kamaiyas (IWGIA 2000: 2982). BASE, an NGO working for the cause of Kamaiyas in Western Nepal, explains in its program strategy document that, "After the malaria eradication in 1950s and the general development in Nepalese society there was an influx of hill people in the jungle of Western Terai where the Tharus were originally living. They were then forced to work for the newcomers to obtain a livelihood, and many ended up indebted beyond repayment" (BASE, 2001: 1). The above discussion indicates that Kamaiya problem is related to the agricultural land of Nepal. So a brief look on the history of land related to Tharus in this part of Nepal would further cast light on the causes of the Kamaiya system and its origin.

Historical research tells us little about land ownership in Bardiya in the past. Land documents dating as far back as 1726 show that land in the area was legally granted to Tharu '*Chaudhary*', who functioned as tax collectors for smaller kingdoms. (Normse, 2000: 2). The C*haudhary* were mainly traditional village headmen **(***mahato/badghar***)** or religious leaders (*gurua*) of the Tharu communities. In 1861 when the Rana ruler extended their rule in this part of Nepal, the chaudhary system was changed in favor of a *jamindar* (landlord) system. The *jamindar* system in effect meant that the Tharu lost influence and were replaced by high caste landowners from the hills. During 19$^{th}$ century large tracts of land in the lowland of Nepal were given

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away by the King as reward to favored courtiers or generals to ensure their loyalty to the Crown. The land granted in this way was called *Birta* lands and the recipients called *Birtawalas*. The Jamindars had power to collect revenue from the Tharu people, who cultivate the land, and in return they paid tribute to the crown. The introduction of *Jamindars* and the granting of *Birta* lands saw an expansion of the farmed area in the Terai (lowlands) and a depletion of Tharus' traditional forest lands. By the beginning of the 20th century the pattern had been established by which the Tharu people would ultimately become disenfranchised, but it was not until the introduction of a malaria eradication program in the 50s that the area was opened up to mass migration from the hills.

Powerful landed families from the hills were able to increase their holdings in the newly opened forests and further marginalize the indigenous Tharu after the malaria eradication. Although a small portion of Tharu became landlords themselves, and adopted the ways of the majority high caste society, the vast majority of the Tharu were left in an increasingly vulnerable position and ripe for exploitation (Robertson and Mishra: 1997: 17).

The documentation available so far does not give a consensus opinion of the origin of Kamaiya system. Notwithstanding, as Rankin says, "Tharus being uneducated, less clever and capable of managing their own lives than the hill people the degree and forms of exploitation might have worsened after the eradication of malaria and influx of *Paharis*" [3] (Rankin, 1999:43).

**The Role of the State on the Kamaiya Issue after 1990**

It was only after 1990 that the government took notice of the Kamaiya/bonded labour system in Nepal. A popular peoples' movement in 1990 had overthrown the old autocratic non-party regime called *Panchyat* system and re-established democracy. The new democratic multi-party environment and the struggling political parties were motivated to protect human rights. In 1991 a new democratic Constitution was introduced in the country. In the new Constitution of the Kingdom of Nepal (1991, Article 20) "Right against exploitation", sub Article 1

[3] Paharis= people from hills

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says," Traffic in human beings, slavery, serfdom or forced labor in any form is prohibited. Any violation of this provision is punishable by law". Although the slavery and serfdom were prohibited by constitution, there was not any domestic legislation of its own to ban the practice. The practice of bonded labour under Kamaiya system was ongoing. The 1994 government led by UML (United Marxist Leninist) officially recognized that a form of slavery existed in the country (Robertson and Mishra, 1997: 76). This recognition came 68 years after the declaration of the abolition of slavery.

During 1990s the government also started some activities for the development of Kamaiyas in Western Nepal. In 1996 the Ministry of Land Reform announced different proposals to address the problems of landless and indebted Kamaiyas. These included education facilities, family planning advice, soft loans and income generation activities. However, the Kamaiyas did not benefit significantly from the government programs as there was not any effective mechanism to reach these scattered families doing agriculture work for their landowners. There was also a proposal from the government that significant expenditure should go the landlords in repayment of the Kamaiyas' debts. The Gorkhapatra newspaper reported that the government had allocated NR five million and nine million in 1998 and 1999 respectively for debt relief of ex-Kamaiyas (Gorkhapatra, 24 February 1999). This led to criticisms from NGOs and confusion as to who would be the real beneficiaries of the scheme. The organizations advocating against the Kamaiya system were very much against this strategy of government. They accused government of taking an initiative for the benefit of landlords rather than Kamaiyas (Karki, 2000: 106). The Ministry of Land Reform (MLR) was also running activities like skill development, education and so on. As far the government programs running through MLR, Karki states that, "Most of the development activities carried out were skill development training, informal education (literacy classes) and scholarship for the primary education of poor Tharu children in government schools. However, there were no mechanisms to deliver services for the poorest of the poor, the Kamaiyas" (Karki, 2000: 110). In 1999 the government introduced a minimum wage NR65 for the agriculture labor but did not have any mechanisms to enforce and monitor the decision.

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The Kamaiyas are land tillers. They have always been associated with farming the land. However, they were never part of the government's land reform program. After 1990 some of the Kamaiyas, like other land settlers called *Sukumbasi* have managed to occupy marginal land by the major rivers and the forest fingers and created their own settlements. In the country there existed a commission called *Sukumbasi Samasya Samadhan Ayog or SSSA* (Landless Settlers' Problem Resolution Commission) formed in 1976 to investigate landless settlers' problem and legalize their encroachment. The Commission has been active in entitling land to landless migrant settlers in different parts of the country. These migrant settlers mostly from hills were hundreds of thousand in numbers. They attracted the attention of political parties because of high numbers of significant voters. The SSSA as government body headed by political appointees nominated by the different ruling governments was used for making the government popular. However, local landowners who saw their Kamaiya leaving their farms at first acted to curtail the process and demolish the settlements encroached by Kamaiyas (Robertson and Mishra, 1997: 76). The local landowners and rural elites have good hold on the local political and administrative system. In Bardiya some of the ex-Kamaiyas resisted the government action of demolishing their settlements. Available documentation states that there were some scattered resistances taking place in the area. "The Kamaiyas organizing in small groups occasionally showed some resistance and uprisings in the region between 1990-2000, but most of them were very much localized and isolated from the broader movements for socio-economic and political transformation" (Karki, 2001: 73). In this process some of the ex-Kamaiyas who had resisted government suppression received some legalized land from the SSSA. In chapter VI under the section Discriminatory Practices I have presented a detailed discussion on Sukumbasi and ex-Kamaiya discriminatory land entitlements. The extreme inequality and position of Kamaiyas as being landowners' employees that has been fostered in rural areas never allowed for a long-term solution to the problem of bonded labor in Nepal. There was a need for government intervention on a large scale for long-term solutions.

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**Kamaiya's Freedom and Non-State Actors' Role**

The restoration of democracy provided an opportunity for the growth of many NGOs and civil society organizations in Nepal. In Western Nepal where the Kamaiya problem exists, the civil society organizations and NGOs had identified the Kamaiya issue as a form of agriculture bonded labor in 1990. After 1990 the numbers of NGOs involved with ex-Kamaiyas development have increased significantly in the five Kamaiya affected districts. Their main work was in the areas of literacy, empowerment, income generation, awareness and so on. There was a difficulty in reaching the needy groups, because the Kamaiyas were under strict observation of their employer/landlords. Although the NGOs were running education and awareness related activities in Kamaiya areas, it was extremely difficult to design programs that would secure a meaningful involvement of the Kamaiyas who have absolutely no free time. Yet it was precisely this group, which was most in need of help. In the most acute cases victims of debt bondage and serfdom were so far under the control of their landlords that, even if they participated in NGO programs, they couldn't put their additional knowledge and abilities to use (Robertson and Mishra, 1997: 76).

However, compared to government programs the INGOs, NGOs and civil society groups were better in reaching the Kamaiyas as they worked with local NGOs and community-based organizations and groups. Among the well known big NGOs, INSEC has established a good network in Kamaiya affected districts. Through the network it was implementing awareness related program at local level and was lobbying and advocating for a Kamaiya system prohibition act at national level. Another NGO, a Tharu organization called BASE (based in Kamaiya affected district), was actively involved in education and awareness related programs focused on the Tharu community that forms the bulk of bonded agricultural labor in Nepal.

INSEC's report states that, at the district level in five districts, the Kamaiya Liberation Front (KLF) was formed in 1996 on its initiation. KLF later registered as a wing of the General Federation of the Trade Union/GEFONT (INSEC, 2002: 12). In 1997 a Kamaiya Concern Group (KCG) was formed at national and regional level that has a membership of all donors, bilateral organization, INGOs and NGOs working on Kamaiya issues.

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Nepal's development budget is dominated by the external supports and grants. The Kamaiya issue was one of the major agenda items for donors and INGOs. Karki states that, "Their programs were mainly focused on the socio-economic context rather than political empowerment of Kamaiyas to demand the abolition of the system as a whole" (Karki, 2000: 103). Whereas there seems to be realization among the NGOs, like BASE, that service delivery types of activities are not going to emancipate thousands of indebted ex-Kamaiyas, Ramdas Chaudhary (an ex-Kamaiya leader and a BASE member) states that, "There was a realization among NGOs that there was a need for a more radical position on the nature and strategies of movements". BASE in its strategy document mentioned that, "Lobby and advocacy for minimum wages of Kamaiyas and their rights to land should be one major agenda of the supporting agencies" (BASE, 2000: 12).

International organization, like Action Aid, PLAN International, Lutheran World Federation, ILO, Danida, UNICEF, were the major INGOs and donors who supported the activities related to education , awareness lobby and advocacy through local NGOs like BASE, RRN, INSEC, SPACE and trade unions like GEFONT. In a focus group discussion in Janatanagar settlement the researcher was informed that, the informal education and awareness program [supported by organizations] helped many Tharus and Kamaiyas to understand and fight against the ideological hegemony which implies that the Kamaiyas are born to serve the master. In an interview Punam Chaudhary a facilitators of a NFE class informs that,

"The rights based education provided through informal literacy classes enabled them to understand the exploitative measures, the concept of minimum wages and the idea that the existing discriminatory society based on social class is constructed socially not naturally". The above discussion suggests that there was some level of empowerment among the people in the areas, but it is still not clear to what extent such programs have benefited the Kamaiya families. A consolidated effort of various non-state actors seems to have been successful in making local communities aware especially the Tharus (to which the Kamaiyas belong). The Kamaiya Concern Group formed by NGOs, INGOS and donors was actively involved in mobilizing the media effectively in terms of reporting human rights abuse from different areas of the Kamaiya affected districts. All this suggest that the news of

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violation of ex-Kamaiyas' human rights subsequently questioned democratic governance. Documentation, research work and pressure from non-state actors on Kamaiya system forced the government to recognize that a form of slavery actually still existed in the country. However, despite the large numbers of initiatives taken by I/NGOs and state agencies for the improvement of the Kamaiyas lives, they did not seem be capable of putting an end to the system. The Kamaiya system in terms of power structures and the Kamaiya's own perceptions and actions that had elements of patronage, tied them continuously to a landlord in a personal and long-term relation.

During field visits and interactions with local people the researcher was informed that the Kamaiya movement accelerated in the beginning of 2000 from neighboring Kailali district. Similarly BASE in its annual report states that, "The growth of the Kamaiya freedom movement was intensified from May 2000 when 19 Kamaiya of Geta village (belonging to an ex-minister) lodged a petition to the local authorities for minimum wages" (BASE, 2002: 15). In solidarity with the Kamaiyas of the Geta VDC, the NGOs, media and human rights activists showed their serious concern for the minimum wages of Kamaiyas.

A series of parallel events were held in the affected neighboring districts when the village and district level authorities showed their unwillingness to respond to their cause. The movement was supported by INGOs through the coalition of NGOs and Kamaiya organizations called the Kamaiya Freedom Coordination Group. Consolidated effort of NGOs, civil society, right groups and media continued to the support Kamaiya movement's fight for their liberation. A small group of Kamaiyas from five districts traveled to Kathmandu for a sit-in protest in front of the Prime Minister's office (BASE, 2000: 12). Ultimately it was in July 17, 2000 that HMG's cabinet meeting decided to announce the freedom of the ex-Kamaiyas and annulled their debts.

The above findings suggest that the freedom of the Kamaiyas was the result of a rather sudden establishment of a movement backed by the consolidated effort of the NGOs supported by INGOs and donors. A concerted effort of the Kamaiya movement with the support of NGOs and major left political parties, HMG was in pressure to declare the Kamaiya system illegal and null and void the debt. The movement started from May 01 2000, and within three months in July the objective

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was fulfilled. As the HMG declared the Kamaiya system illegal and punishable by law, annulled their debt and called for emancipation of all Kamaiyas with immediate effect from July 17, 2000.

An analysis of media reports and documentation reflects that the group of 19 Kamaiyas who instigated the movement belonged to one landlord. The landlord was an ex-minister of the democratically elected government from the Congress Party in 1960-61 (Nepal had a democracy for a short period of time). In 2000, at the time of declaring the freedom of the Kamaiyas, the same party was in power after 40 years. Strategically it happened to be an effective instigation that had good media coverage and concern of many human rights activists and organizations involved in the protection of rights.

The cabinet decision declaring the freedom of the Kamaiyas' freedom states, "From the date in any area or parts of the country any work directly or indirectly in the name of Kamaiya is totally prohibited and declared illegal. Any forced labor in the name of Kamaiya system is freed from the date of today. The act of working in the name of Kamaiya or bondage based on written or verbal bond against the existing laws will hereafter be punishable. It is further announced that if any Kamaiya or his family members have been engaged in any kind of written or verbal commitment against the existing laws is hereafter unacceptable and punishable. Those who freed from the Kamaiya laborers from today they need not pay any due debts they owe to their debtors. If anyone is found practicing against the existing law or declared policy will be strictly punished through effective law. In this regard a decision has been taken to register a bill with the parliament secretariat for ensuring just wages, rights and well beings of laborers in any domestic and agriculture sector" (INSEC, 2000).

**Aftermath of the Freedom**

However, the politicians have been painfully slow to translate the commitments of the human rights protection in favour of the ex-Kamaiyas laid down in already existing domestic and international documents and conventions. Although the Kamaiyas were technically freed from bondage, their rights of shelter, education and livelihoods were continuously violated. The national daily *The Rising Nepal* (March 8, 2002) reported that, "Though the government announced the emancipation

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of the Kamaiyas, over 22,000 families of Kamaiyas across the country are still suffering neglect". After the announcement of their liberation, Kamaiyas from all over the five districts expressed their warm welcome to the decision and celebrated the historic occasion by organising mass meetings, rallies and demonstrations in the districts concerned. However, the landlords, though confused in the beginning, after a few weeks of the announcement, started to remove their Kamaiyas (in fear of legal consquences) from the *Bukura* (huts) provided earlier. The ultimate result was the unexpected gathering of Kamaiyas in the streets of district headquarters along with their families. As they were forced to come out under the open roof of the rainy cloudy sky, there was no other option for them but to form a picket line in front of the government offices and take shelter in the public grounds (GEFONT, 2001: 5). As an emergency management for a very short period, Kamaiyas were asked to live temporarily on the fallow land in so-called camps by making temporary huts with tarpaulins or plastic roof provided by the DDCs and NGOs (GEFONT, 2001: 3). Six months after declaring freedom from the Kamaiyas the government announced it would entitle a maximum of five kattha (0.35 hectare) of land to each ex-Kamaiya family. It was only after 18 months of freedom, that the parliament promulgated a bill called 'Kamaiya Labor Prohibition and Rehabilitation Act' (Feb 18, 2002). My findings of the field research under the good governance section in chapter five will examine and discuss the achievement of this Act and programs from the perspective of a Rights Based Approach.

On the present state of the ex-Kamaiyas, Raiment an ex-Kamaiya woman, states that,

"We are bound to be the Kamaiyas again due to lack of means". She further states that,

"Most of the Kamaiya families still have not got the land that they are supposed to get. There is discriminatory entitlement and the land allocated is not enough for our livelihood". This situation reflects that they are compelled to go back to the same state of bonded labor, as they have no alternative means for livelihood. It would also be relevant to analyze the role of non-state actors on the situation of ex-Kamaiyas after their declaration of freedom. According to Sundar Chaudhary, an ex-Kamaiya leader,

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"The pressure and consolidated effort raised at the time of freedom movement were only limited to achieve the rights of freedom. The supporting agencies did not have an alternative plan on the consequences of the freedom declaration". He further says,

"The government did not listen to our demands of ten katthas of land".

On this Karki states that, "INGOs in practice separated themselves from the alliance of NGO activists who were campaigning against the Kamaiya system both at regional and national level. This is because national NGOs had taken a more radical position on the nature and strategies of the movements. Participating INGOs maintained clearly that if they were involved in challenging government "we will be in trouble"(Karki, 2000: 108). Whatever may be the reason the report shows that Kamaiya Concern Group (KCG), which has representation of INGOs, failed to continue its consolidated effort after the government declared to free the Kamaiyas. The Association of International Non-Governmental Organization (AIN) released a joint statement on 17 June 2000 and requested to HMG to take the practical action required to ban the Kamaiya system effectively in Nepal and declare a cancellation of *Saunki* (debt) of Kamaiyas (*The Himalayan Times*, 18 June 2000). This encouraged both the struggling Kamaiyas and the local NGOs to fight to end the system in practice as well as legally. However, after the freedom declaration of the government's role became central to solve the long term problem of land entitlement.

**Limitations of Freedom**

It is worthwhile to look closer at the Nepal's agrarian structural arrangement to understand the complexity related to the land distribution and the position of groups like Kamaiyas in this structure. The UN Human Development Index 1998 states that, "The top 6% of landlords controlled more than 33% of the total agrarian land area of the country, while the bottom 40% of agricultural households operate only 9% of the total agricultural land area. Approximately one million households that depend on agriculture own less than 0.1 hectare of land and are in fact landless. About half that number did not even have enough land to build a house of their own" (UNHDR, 1998: 117-118). In this scenario the Kamaiyas in Nepal as bonded agricultural laborers can be seen as the product of an ineffective land reform program.

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The above picture from the Human Development Report helps us in understanding the thrust of the actual problem related to the land holdings. The top 6% who are holding a major share of agro economy also have control over the political and social institutions of society. In democratic elections in least developed nations like Nepal those who are from the top 6% and perhaps some from 40% represent political parties and lead the government. As Shrestha says, "In Nepal, traditionally it is the agrarian landed class that has prepared and supplied the whole echelon of state bureaucrats" (Shrestha, 1990: 140). It allows the landed class to play a powerful role in the operative mechanisms of a patrimonial state. The system represents a coalition of landowners, local elites and the state is determined to keep the peasantry in a subordinate position (Shrestha, 1990: 41). The above situation reflects, there is a need of government intervention on a large scale for a long-term solution to uproot this fundamental inequality and injustice. But the government of Nepal has not been able to come up with a land reform program and plans to resettle land-less groups like the ex-Kamaiyas.

An appraisal through the lens of human rights can provide insight into the causes of poverty that result in a denial of human rights. International laws and treaties help to identify the solution. But it so happens that the vicious circle of the social and cultural system makes it difficult for realization of human rights in a poor community. Although it is the obligation of the state to draft non-discriminatory laws based on equity to redress the rights of the vulnerable, the politicians and bureaucrats who represent the state authorities often do not represent the victims. A group like the ex-Kamaiyas needs to be empowered to resist the cultural practices of discrimination and be able to participate through claiming their land rights and an economic right. Because of land pressure landholdings are difficult and costly to obtain. Skilled jobs are few and even harder to obtain for the low-skilled Kamaiya.

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# CHAPTER 4
# CONCEPTUAL FRAMEWORK OF RIGHTS BASED APPROACH

## 4.1 Interrelation and Interdependence of Rights

Human rights are a global vision backed by state obligations. The term "human rights" refers to those rights that have been recognized by the global community and that are protected by international legal instruments (Hausermann, 1998: 25).

Many peoples understanding of rights have long been limited to civil and political rights because they are enforceable. Protecting people from impoverishment and enabling them to develop in accordance with their equal rights and dignity is part of Economic, Social and Cultural (ESC) rights. While human rights approach to development refers to all human rights and thus emphasizes the interrelation and interdependence of human rights, it pays special attention to economic and social rights as the authentic concern of development policy (Hamm, 2001: 1006). More and more the equal status of all human rights is recognized in practice, economic as well as social rights have become a major issue not only in the debate over human rights, but also in practical human rights policy of both states and international organizations. Part of this rethinking is the rapprochement of development and human rights policy in a so-called human rights approach to development (Hamm, 2001: 1005). The Human Development Report 2000 published by United Nations Development Program (UNDP) is a prominent example of the discussion that promotes sustainable and people-centered development. This shift has brought a number of stronger areas emphasis on addressing root causes and sustainable solutions, advocacy for policy change and for an increase in government spending on social services, campaigning for behavior changes and a greater commitment by development agencies to work together[1].

[1] Examples for greater collaboration include sector-wide appriaches, PRSPs UNDAF, CDF

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Today development is understood within the concept of sustainable human development and addressing human beings with respect to both resource management and participation. A sustainable development is meeting the needs of the present without compromising future generations' ability to meet their needs. Essentially, a rights-based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of sustainable human development. The legal and normative character of rights and the associated governmental obligations are also national constitutional human rights provisions.

Among the approaches that have been adopted lately in the field of development, it is noticed that an ever-growing number of organizations have adopted the rights-based approach. Human rights, as they are known today, are the result of a long process of struggles and agreements about principles and legal and moral patterns. A critical moment for the affirmation of global-level rights was the UN World Conference held in Vienna in 1993. In this conference, the wholeness and universality of the civil, political, economic, social and cultural rights as part of human rights were affirmed.

It is also worthwhile to look on the content of the declaration to the right to development (a third generation right), which is an important guideline for the design of development policies. It identifies the individual as the prime beneficiary, and the need for creating individual and social empowerment through enabling environments (Andreassen, 1995: 23). As far as is required for the realization of economic, social and cultural rights, it might include economic growth, but development is much more than just growth. Neither would all forms of growth be compatible with development. The distinguishing criteria would be according to Asbjorn Eide, “whether the processes of growth were such that they did not negatively affect civil and political rights and that they gave better protection of social and economic rights to the most vulnerable and impoverished” (Eide, 1996: 10).

Article 1, paragraph 1 of the Declaration on the Right to Development (1986), states: “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

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According to Sengupta (2000), the article spells out three principles: (a) there is an inalienable human right that is called the right to development; (b) there is a particular process of economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized; and (c) the right to development is a human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy that particular process of development. The first principle affirms the right to development as being an inalienable human right and, as such, the right cannot be taken or bargained away. The second principle defines a process of development in terms of the realization of "human rights", which are enshrined in the Universal Declaration of Human Rights (1948) and other human rights instruments adopted by United Nations bodies. The third principle defines the duties and methods of fulfilling the obligation of the duty holders (Sengupta, 2002: 847).

With reference to on the above mentioned third principle, government of Nepal should be obliged to ensure free, effective and full participation of the ex-Kamaiyas in the program decision making and implementation when designing programs for their development. This approach places fundamental importance on the organizing of victim groups. The HDR 2000 is also particularly important, as it too adopts this perspective, indicating that the human development perspective must be based on rights that complement each other. The World Bank also seems to be advancing along these lines as a strategy for its policies, as can be seen in some of the more recent documents of the Bank (September 2000). Many European NGOs are also working with this approach such as, in England: Oxfam GB, Cafod, Christian Aid, and Save the Children; in the Netherlands: Novib, and Cordaid; and among the large international alliances such as Action Aid, Oxfam International and Save the Children Alliance.

The rights-based approach to development is a conceptual structure that is supported by patterns and modes of operation geared towards the promotion and protection of human rights. It integrates norms, patterns and principles of the international system of human rights into plans, policies and processes of development. Even though there are variations in the conceptualization of the rights perspective, the premise that the human being must be at the center of the

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development process is consistently emphasized. According to Amartya Sen (2000), “the human rights perspective includes three important aspects: 1) the intrinsic importance of human beings; 2) their consequent role in economic development; 3) its constructive role in the genesis of values and priorities. Human rights have intrinsic and also instrumental values for development. Human development requires human rights in the sense of legal and political recognition of the liberty of persons, as well as of their fundamental rights (Sen, 2000: 15)

The definition of objectives for development in terms of specific rights, with legally enforceable claims, is an essential element in the rights-based approach, as well as the creation of normative links and instruments connecting human rights at the international, regional and national levels. The conceptualization of human rights considers that they are a multiple, indivisible, interdependent and interrelated set of rights: civil, political, economic, cultural, and social. This implies that the structure of rights that is internationally accepted covers such issues as health, education, and housing, access to courts, personal security and political participation. According to Action Aid, "it is not acceptable to permit the implementation of policies, projects or activities that have as an effect the violation of rights, or that rights be used as basis for negotiating development support (reducing labor rights to gain access to transnational investment capital in free zones, for instance, has become quite a frequent policy in various Central American countries). Examples from Latin American and Asian countries show that many military governments have abolished civil and political rights, claiming the need for order and economic growth that seem to be at odds with these arguments, as do the economic adjustment programs proposed by the IMF to Argentina and other countries of the region"(Action Aid, 2002: 17-18).

The actions based on this perspective aim at the enhancement of accountability. To reach this, they identify existing and accorded rights, those who are entitled to these rights, and those who are responsible to implement them and to promote access to them. The direction adopted by many who are working in the field of rights has been to identify a wide range of relevant actors who are responsible for the promotion, fulfillment and protection of the rights, listing governments, authorities and local organizations, private companies and institutions, and international donors. One of the aims of this approach is the adoption of the present

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standards of human rights as a universal standard to be used to measure the promotion and progress of human rights in all parts of the world, as well as to ensure a minimum level of accountability.

According to the ICCPR, national states have a primary responsibility to provide, guarantee and protect rights (article 3). The inability of national states to accomplish this set of rights implies that the international community must provide the means to implement them. Similarly, according to the ICESCR, the national state also has the primary responsibility to ensure that this set of rights is respected (article 3). However, if the national state is not able to ensure some of these rights, this cannot be demanded in a court of law, as there is no jurisdiction responsible for such judgments. They are recognized as rights, but there are no legal procedures for demanding these rights instead states are responsible only for their progressive realization (Article 2 ICESCR). Thus we may find that ESC rights may not enforceable and therefore may not be achievable in the short term. Nevertheless the mid 1980 saw some positive developments at the international level. With the establishment by the United Nations of the Committee on Economic, Social and Cultural rights (CESCR) to monitor the implementation of the ICESCR The committee's establishment provided the Covenant with equal status to that of the ICCPR (Abeyesekera, 2000: i-ii).

Integration of human rights to development in programs and policies is the desired strategy of the rights based approach. The international human rights framework recognizes the interdependence of rights and the fact that the enjoyment of some rights may be dependent on or contribute to the enjoyment of others. For example, if the ex-Kamaiyas are to enjoy the right to freedom they must enjoy an elementary level of economic security and well-being. Such as right to adequate food, right to health, right to education, right to decent work, right to adequate housing, and right to personal security. "A right-based approach involves not charity or simple economic development, but a process of enabling and empowering those not enjoying their ESC rights to claim their rights" (Abeyesekera, 2000: 14).

The strategy of the right-based approach should be to identify marginalized families like ex-Kamaiyas and other suffering most intense denial and violation of rights, injustice and distress. It attempts to address not just the effects of poverty,

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marginalization, injustice, denial and violation of rights, but also their causes. It facilitates and supports poor and marginalized people's own action to address injustice and restore their rights to affirm that it is the fundamental responsibility of the state to ensure justice and rights. Individual and civil societies have both the rights and responsibility to define and protect rights.[2]

I would like to use Hamm to summarize the above discussion who says' a human rights approach to development does not in itself guarantee more success; but it brings important changes and options for sustainable success for development and human rights (Hamm, 2001: 1012). The RBA strategy seeks to empower and facilitate participation of the marginalized. Considering that the rights based approach to development sets the achievement of human rights as an objective of developments. I agree with the ODI, that "Rights Based Approach uses thinking about human rights as the scaffolding of development" (ODI, 2003: 1).

## 4.2 Conceptualizing Principles of a Rights Based Approach (RBA)

It would be appropriate to conceptualize the main elements of rights based approach and discuss how these could be operationalized in relation to the development programs and polices for ex-Kamaiyas. Among the agencies that explicitly claim to follow a human rights approach to development are UNDP and UNICEF at the international level.[3] There are many international organizations such as Amnesty International, Human Rights Watch, Oxfam, and Action-Aid, Care etc who are involved globally in human rights research, monitoring and advocacy work. UNDP, one of the promoters of this new concept defines human development as "the process of enlarging the range of people's choices, increasing their opportunities for education, health care, income and employment, and covering the full range of human choices from a sound physical environment to economic and political freedoms" (UNDP, 1992). According to this definition human development is a process for economic and political freedom. This also indicates that economic and civil rights should be addressed together. It would be relevant to relate the ODI's definition on

[2] Operationalizing rights approach to development: Action Aid Asia Regional Workshop, July 31 –August 4, 2000 Bangkok.

[3] See UNDP: Integrating human rights with sustainable human development: A UNDP policy document (1998).

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human rights approach to development means as stated earlier that 'RBA sets the achievement of human rights as an objective of development.

Regarding this approach of development, Hamm suggests that, while the goal is clear and more or less agreed upon the views of how the goal should be reached vary in detail and there are differences in the main focus. However, one can delineate some common factors: (1) Reference to and starting from human rights treaties; (2) Non-discrimination, special focus on disadvantaged groups, explicitly women and children; (3) Participation and empowerment (4) and good governance (Hamm, 2001: 1011). What is needed for economic, social and cultural rights to become entitled is thus a broader conceptualization of accountability in human rights thinking. In this regard Sano, suggests two strategies that seem particularly pertinent for human rights defenders to follow in order to make their agenda part of a development agenda: (1) a participatory notion of promotion of the rule of law and (2) a genuine concern for economic social and cultural rights (Sano, 2000: 749).

A connection exists between efforts towards good governance and democratization, and thus civil and political rights, with the rights for free expression, association and assembly. However, according to Sano, good governance relates also to economic social and cultural rights because these rights with their emphasis on living standards, health, and education can be seen as prerequisites for people's participation (Sano, 2000: 736) as people's participation is an essential element for democracy and good governance. The UN, OHCHR further states that "a rights based approach to development includes the following elements: express linkage to rights, accountability, empowerment, and participation" (OHCHR 2003: 1). Compiling the above discussion we find that a rights-based approach to development is a "conceptual framework for the process of human development" that is normatively based on international human rights standards. Operationally it is directed to promote and protect human rights. The norms and standards are those contained in the international treaties and declarations. The findings of the above discussion suggests that the principles of rights based approach start from human rights treaties, participation, empowerment, accountability, good governance, equity, equality and non-discrimination. In accordance to the above discussion the following propositions of Rights Based Approach to development can be drawn.

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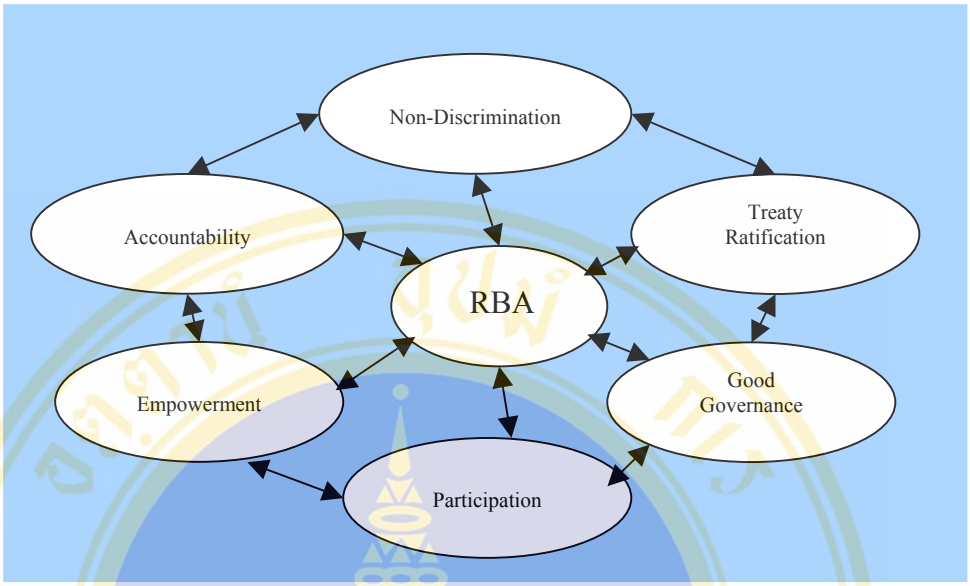


**Figure 4.1 Elements of the Rights Based Approach**

Extracted from the above discussion of these six elements, treaty ratification is not related to my research as I have said in earlier section that HMG has ratified all the major treaties. I have incorporated accountability a key requirement of good governance. Good governance has a broader context under which accountability can be located as one of its major elements. I will only briefly outline the importance of aforesaid two elements.

Treaty Ratification

Ratification of the treaties pertaining to human rights, is the acknowledgement of and acceptance of human rights. By ratifying human rights treaties states voluntarily oblige themselves to confirm and to comply with human rights standards. By April 2000, 144 and 142 countries have ratified the ICCPR and the ICESCR respectively has ratified both of these conventions. Treaty ratification is one element of human rights approach to development.

By ratifying the treaties the governments automatically incorporate the principles of Human rights at domestic levels. As the treaties promote a rights based approach to development government policies should mirror this approach. This

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requires duty bearers (HMG) to design development policies which should respect, protect and fulfill human rights. According to the international human rights conventions, states are responsible for the well-being of the people in their territory and the realization of their rights. It is an obligation of the state to enforce a rights based development approach in their programs and policies. Thus, the pertinent issue that arises here is whether Nepal has fulfilled its commitment and established rights based programs and implementation mechanisms. The effectiveness and efficiency of the government commitment can only be seen through good governance at local and central levels. Thus the key requirement is good governance. I will also examine whether the mechanisms have characteristics of good governance for an equitable, inclusive and participatory approach of development for the ex-Kamaiyas. A thorough discussion follows later in this chapter under the section Good Governance.

Accountability

One other element of the RBA identified above is accountability. An essential feature of ensuring rights is that the state is accountable and responsible to its people. Accountability is the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights in a democratic society. An accountable government is possible through strengthening governing capacities and establishing democratic mechanisms, which are an essential aspects of good governance.

Summarizing the above discussion and findings I will now conceptualize the principles of rights based approach to development in relation to this thesis. I propose the following three elements as the key principles of Rights based approach to development for the program and policies related to ex-Kamaiyas.

(1) Good Governance (2) Participation/Empowerment and

(3) Non-Discrimination.

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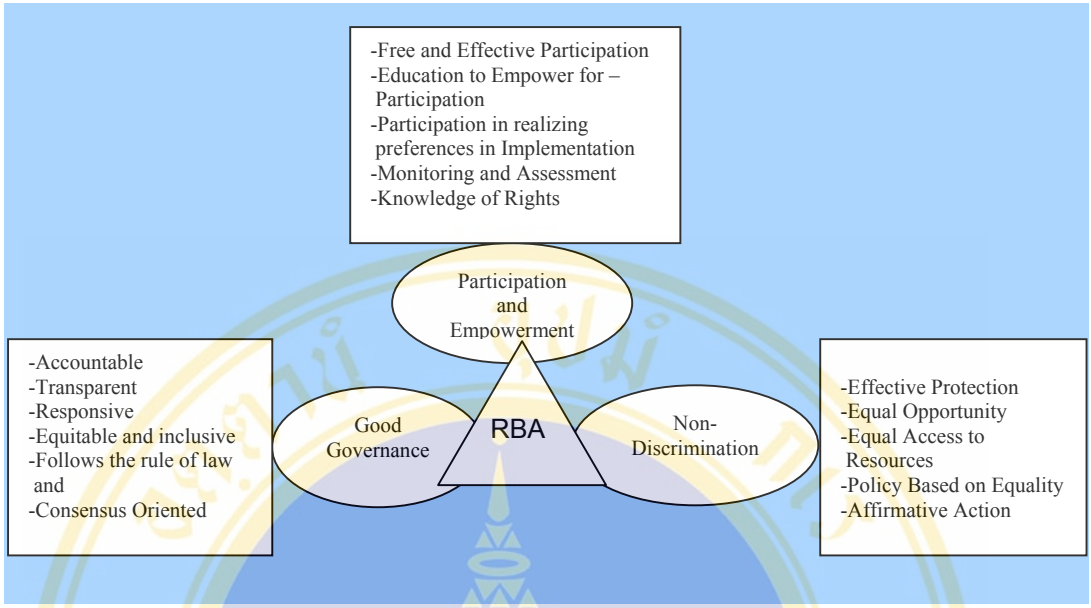


**Figure 4.2 Conceptualization of the Rights Based Approach to Development**

Now the following section of the thesis will discuss the above three propositions of RBA to development.

4.2.1 Good Governance

Recently the terms governance and good governance are being increasingly used in development literature. However the concept of governance is not new. It is as old as human civilization. Simply governance means: the process of decision-making and the process by which decisions are implemented or not implemented (UNESCAP, 2003: 1). Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance. Government is the central actor in governance. Other actors invloved in governance vary depending on the level of government that is under discussion. For example in the developoment of ex-Kamaiyas the other actors may include influential land lords, associations of peasant farmers, cooperatives, NGOs, research institutes, local indigenious leaders, finance institutions and the political parties. There is an interconnection between all these actors and good governance. All these play a role in decision making or in influence the decision making process. In relation to the land issues in rural areas locally powerful families particularly the Landlors make or influence decision

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making. Such informal decision making is often the result of cultural and economic domination and corrupt practices of governance.

The characteristicts of Good governance are: It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society (UNESCAP, 2003: 2). Human development in its fullest sense requires democratic governance-with all people able to participate in the institutions and decisions that shape their lives and all those who hold power held accountable for their actions (Mishra, 2003: 100). The state party as a central actor should accept responsibility for the impacts of the state's action on human rights of its citizens. It is the responsibility of the state to support the mechanisms that help to inform to its citizens for their rights. Thus, the ex-Kamaiyas should be aware of their basic rights to protect themselves from the exploitative measurers.

So accountability becomes a key requirement of good governance. Not only governmental institutions but also the private sector and civil society organizations must be accountable to the public and to their institutional stakeholders. Over the past two decades growing demands for influential actors to acknowledge their accountability in all spheres of public life have had led to the creation for new procedures. The key issues regarding accountability is the existance of transparent and effective mechanisms to inform the poor people and their organizations. Rights and obligations demand accountability. Human rights approach emphasizes obligations and requires that all duty holders including states and intergovernmental organizations be held accountable for their conduct in relation to international human rights (OHCHR, 1995: 2).

The people should be informed about their rights through transparent and effective mechanisms. Transparency is the process in which the decisions taken and their enforcement are done in a manner that follows rules and regulations. It also means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. The ex-Kamaiyas do not understand

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the legal jargons of laws and conventions and of the programs related to them. So many of them may not know what governance is all about. For them poverty, unemployment, exploitation and inflation are the issues related to their livelihood. Therefore, it requires the provision of enough information in relation to their development that is easily available and understandable. The right to information is also a claim of the rights and state should havd a response adequately to such claims. It is the responsibility of the government to recognize the specific conditions or characteristics of various groups. On the basis of recognition of diversity, develop and build up infrastructure, law and mechanisms that protect rights of the different groups.

Internationally, states have increasingly been held to account under both UN and national mechanisms, on the basis of treaties ratified by countries and the laws and policies. However, accountability is not exacted only through such formal mechanisms. As discussed earlier, not only governmental institutions but also the civil society organizations are accountable to the public and to their institutional stakeholders. The discussion suggests that a diverse range of techniques is required to integrate to ensure the human rights of vulnerable groups such as ex-Kamaiyas. As procedures of accountability are developed, they create important opportunities to collect information.

Accordingly the challenge of good governance has to do with issues concerning the institutionalization of democracy. Governance should involve a proper understanding and articulation of what is involved in democracy in the given social and political context, structuring and restructuring institutions in such a way that they produce the functions expected (Pandey, 2001: 27). Good governance requires that institutions and processes try to serve all stakeholders within a reasonable timeframe. It is consensus oriented. There are several actors and as many view points in a given society. Good governance requires mediation between the different interests in society to reach a broad consensus on what is in the best interest of the whole community and how this can be achieved. It also requires a broad and long-term perspective on what is needed for sustainable human development and how to achieve the goals of such development (UNESCAP, 2003: 3). This can only result from an

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understanding of the historical, cultural and social contexts of a given society or community. A society's well being depends on ensuring that all its members feel that they have a stake in it and do not feel excluded from the mainstream of society. This requires all groups, but particularly the most vulnerable the ex-Kamaiyas, have opportunities to improve or maintain their well being.

The rights based approach to development is not recognized in many current development policies, projects and activities and thus this has the effect of violating various rights in development process itself. For example, an expert from the German Ministry of Economic Cooperation and Development (BMZ) states that this knowledge is widely lacking within his ministry and that the development experts are not yet in a position to implement a human rights approach to development with all its consequences. Especially the knowledge of economic and social rights is at best rather general (Hamm, 2001:1023). Article 2 (1) of the ICESCR obliges the state parties to cooperate for the realization of all rights put down in the treaty.

As the rights-based approaches are comprehensive in their consideration, the different rights are interdependent and interrelated. This calls for a development framework with sectors that mirror internationally guaranteed rights, thus covering, for example: health, education, housing, justice administration, personal security and political participation (OHCHR, 2000: 2). Participation by both men and women is a key cornerstone of good governance.

Participation could be either direct or through legitimate intermediate institutions or representatives. It is important to point out that representative democracy does not necessarily mean that the concerns of the most vulnerable in society would be taken into consideration in decision making. For example groups like ex-Kamiyas who may not have adequate access to the elected representatives. To seek their participation it may be necessary to identify their traditional structures, leaders. Similarly comprising of their representative and other local leader a vigilance committee at community level could be formed to monitor the abuse of the ex-Kamaiyas' rights and their participation in governing their program. There should be mechanisms and institutions through which all the citizens specially the vulnerable ones can express their interests and preferences during the decision making process. Governance comprises the mechanisms, processes and institutions through which all

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stakeholders, viz. the state, private sector, civil society and citizens articulate their interests.

It is equally essential that the capacity of the vulnerable is enhanced so that they can benefit themselves with the available mechanisms. Non-state actors like NGOs and civil society organizations plays an important role to capacitate the vulnerable. However, it is essential that government and non-government actors facilitate each other in implementing development programs. As Hamm says, "a human rights to development works only as long as development and human rights NGOs cooperate and consider each other's work" (Hamm,2001: 1007). Monitoring by groups like vigilance committees, civil society and NGOs complements the work of states and international organizations. Coooperation of the state and non-state actors is needed so that a human rights approach to development is sustainable and successful.

From the above discussion it should be clear that good governance is an ideal for a rights based approch to development. Chapter V on government program and rights based approach will examine the governance aspects in the program and policies related to the development of ex-Kamaiyas.

4.2.2 Empowerment and Participation

Strengthening community capacity, focusing on the people, how they are organized, how they relate to external and internal leadership and governance, attitudes, behavior, skills and institutional organization are part of empowerment. The objectives of community empowerment, therefore relate to the “people element” of development, led by participation. Capacity development of a community is an integral element in the social process of empowerment, through which ideally the community undergoes through active participation. Empowerment of the people manifests itself in the ability of the people to participate in the decision making process and indeed in the planning and activities which impacts on their lives. To facilitate the people's participation, an empowerment processes must be launched together with participation. As Sano suggested that, "human rights are to be an

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integral part of development agenda and it recognizes the need to ensure the full, free active and meaningful participation of peoples" (Sano, 2000: 735).

The concept of participation in development is not entirely new. By the late 1940s, the early initiatives of development assistance and of planned interventions in underdeveloped countries to promote development and change had commenced. However, it was in the 1950s, and particularly in the 1960s, that these initiatives, via the actions of processes of community development, sought to involve local people in efforts to improve their communities.

The importance that participation has been gaining in the agenda of the key actors of development has led to the inclusion of empowerment in the framework of development and policies. Hence participation and empowerment has come up strongly as one more element of the RBA. Empowerment leads to the strategy for participatory development that stands for partnership, which is built upon the basis of dialogue among the various actors, during which the agenda is jointly set, local views and indigenous knowledge are deliberately sought and respected and people take active part in their own development. As UNDP reports states that, this implies negotiation rather than the dominance of an externally set project agenda so that the people become actors instead of being beneficiaries (UNDP, 1999: 2)). Rights-based approaches give due attention to issues of accessibility, including access to development processes, institutions, information and redress or complaints mechanisms. These are all part of participation.

The existing planning procedures for the ex-Kamaiya programs should be based on the understanding of the critical ingredients of participation; namely participation in decision making, participation in implementation, participation in benefit sharing and participation in evaluation. Therefore participation of the ex-Kamaiyas should start from need identification and subsequently at the implementation level of the program made for them. The Right to Development confers that participation is a right. As Arjun Sengupta suggests, “The meaning of exercising this right consistently with freedom implies free, effective, and full participation of all the individuals concerned in the decision making and the implementation of the process”(Sengupta, 2000: 5). Participation rights begin to be relevant at the time of initial decision making of their freedom and making

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rehabilitation program for them. Thus participation must begin at the level of program design and planning and consideration of alternatives extend all the way through monitoring. This is harder to achieve but guidelines may be drawn upon by the program that is going to implement for the ex-Kamaiyas. Participation is a process through which stakeholders influence and share control over development initiatives and the decisions and resources, which affect them.

There exists a traditional approach to development that the administrators of development projects and the beneficiaries do not sit on the same side of the table. In fact they sit at different levels, the former being always at a higher level. What follows, therefore is that it is inevitable that each looks at the other with suspicion. To the official, the ex-Kamaiyas are ignorant, illiterate and un-resourceful. To the ex-Kamaiyas the official is conceited, unsympathetic, unconcerned and corrupt. Each does not take the other into his confidence. Instead of getting together they continue to stay apart. At times the ex-Kamaiyas of a given area are not even informed of project implementation in their area. Many ex-Kamaiyas are allocated the same land that is being used by other communities like the *Dalits or* Sukumbasi (landless) communities. “Dalit community of Kailali district in Nepal warned authorities they will start an agitation if their land is allocated to the ex-Kamaiyas” (The Kantipur vernacular May 06, 2003: 3) In this the vernacular further reports that the government has already issued land certificates to the 185 ex-Kamaiya families to the same land that the 150 Dalits family are living since the past 12 years , through encroachment. At other times, after plans are made the community is informed through formal meetings where the officers justify their plans, but modification as per real need is not considered. Many projects tend to be supported and designed by I/NGOs and donors in consultation with central government officials, the budgets and timetables are planned in a rigid way, which make it difficult for the community to play a significant role.

Overall, the principles guiding beneficiary participation in government programs have been quite abstract and of limited operational impact. Beneficiaries were not assigned a role in the decision-making process, nor were their traditional and indigenous (technological) knowledge sought prior to designing project components. According to the UN Declaration on the Right to Development, such participation

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must be “active, free and meaningful”. So mere formal or “ceremonial” contacts with beneficiaries is not sufficient. Participation has to meaningful and active. “Active and informed participation by the poor is not only consistent with, but also demanded by the rights based approach because the international human rights normative framework affirms the right to take part in the conduct of public affairs” (OHCHR, 2002: 16). The strategy for fulfilling to the rights of the ex-Kamaiyas has to be grounded in the effective participation of the group itself in the process.

Participation in this sense necessitates the creation of organizations of the poor that are democratic, independent and self- reliant. Participation is seen as a goal in itself. This goal can be expressed as the empowering of people in terms of their acquiring the skills, knowledge and experience to take greater responsibility for their development. People's poverty can often be explained in terms of their exclusion and lack of access to and control of the resources, which they need to sustain and improve their lives. “Participation is an instrument of change and it can help to break that exclusion and to provide poor people with the basis for their more direct involvement in development initiatives” (UNDP/CSOP-2002).

The critical issue to bear in mind is that peoples participation in development is concerned with two things: i). Developing people's capacities and skills to negotiate and to seek the resources and changes which they require in order to improve their lives; and ii) whereby local people can be brought to play a part and to develop a stake in development programs and projects. Both purposes are of equal importance; the former seeks to secure a longer term and sustainable development for poor people the latter is crucial in providing immediate access to the benefits of development.

The democratic structures should ensure the participation of such vulnerable groups. In relation development programs for the ex-Kamaiyas’, the local leaders are the one who bring their village’s problem to the higher authority in the given development set-up. Not only elected municipalities leaders should be involved but also the leaders from ex-Kamaiya groups and from indigenous structure (Tharus’traditional leaders) should also be part of the participation process. The Kamaiyas are not aware of their role because of various reasons such as poverty, isolation, and illiteracy.

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The RBA further affirms that the point is not that the poor should participate in all the technical deliberations that underlie policy formulation. But that, they must be allowed to take part in the process of setting priorities and benchmarks that will guide such deliberations. Contractual frameworks for collaboration in community participation activities between community groups of ex-Kamaiyas, NGOs and Governments will benefit from such a degree of flexibility. As PRIA states, "Providing room for negotiating the best operational strategies and procedural arrangements of that collaboration can give all parties greater freedom in finding case-specific norms and for maneuvering concessions" (PRIA, 1995: 21).

4.2.3 Non Discriminatoin and Attention to Vulnerable Groups

The idea of human rights assumes that all human beings have some basic, commonly shared characteristics, and that as a result they should be viewed and judged as members of the human race rather than as members of a particular group. The recognition of these shared qualities gives rise to a principle of equality, which requires that all persons be treated with equal respect. Whatever the social cultural and political status, whatever the conditions we live we are in principle at least entitled to the same basic rights and freedoms. The idea of non-discrimination is a fundamental underlying principle of human rights (Abeyesekera, 2000:42). The human rights imperative of such approaches means that particular attention is given to non-discrimination, equality, and equity to the vulnerable groups like ex-Kamaiyas. There is no universal checklist of who is most vulnerable in every given context. Rather, rights-based approaches require that such questions be answered locally: who is vulnerable here and now? Development data needs to be segregated, as far as possible, by race, religion, ethnicity, language, sex and other categories of human rights concern.

A non-discrimination approach involves access to equal opportunity and the development of basic capacity. It requires eliminating all barriers to economic and political opportunities and access to education and basic services. Non-Discrimination is based on the principle of equity which is fairness based on justice supplemented by law. In a rights approach the concerns about equity and social justice must inform the development policies (ECOSOC, 2002: 246).

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The principal of non-discrimination found as the most fundamental elements of international human rights law. In principle, everyone is the beneficiary of human rights (Article 22 of the UDHR). In practice however, some groups are vulnerable than others or have traditionally been subject to discrimination; they may acquire special protection of their rights, sometimes through the adoption of affirmative action or other special measurers. (Eide, Krause, Rosas 2001: 19). Strategies to improve the conditions for the poorer part of such societies must seek to ensure for them an opportunity to take charge of their own destiny, which is often blocked by the more powerful and assertive members of society. In such cases economic, social and cultural rights can be better safeguarded by land reform and other ways of redistributing basic resources, than through high levels of public expenditure (Eide, Krause, Rosas 2001: 19) As a human rights instrument, the clear purpose of the Covenant is to protect the fundamental rights of every person without exception. Human rights are seen to adhere to every human being by virtue of their humanity means that are possessed by every person to an equal extent (Craven 1995: 153). I quote Article 23 (3) of UDHR saying, everyone, who works has, the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

As the preamble stresses, the Covenant is based upon an idea of the ‘equal and inalienable rights of all members of the human family’. The concept of ‘equal rights’ confirmed in the covenant in a general manner by the fact that the rights pertain to ‘everyone’ and more specifically in article 3 of CCPR and CSCR which makes explicit reference to the equal rights of men and women. The idea of equality may also be found in a number of other provisions in the Covenant. Article 7 (CESCR) refers to equal remuneration for work of equal value’ to ‘equal pay from equal work’, and to ‘equal opportunity for everyone to be promoted’. Similarly, article 13 (CESCR) provides that primary education shall be provided free to all and higher education shall be made equally accessible to all. However, it follows from the structure of the Covenant that the most important provision as regards the promotion of equality or of equal rights without discrimination within the covenant is article 2 of CESCR. In that provision, recognition of a concept of equality is to be discovered in a

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negative formulation prohibiting of a concept of equality is to be discovered in a negative formulation prohibiting discrimination.

It could be said that dual concepts of non-discrimination and equality deriving from article 2(2) 'constitute the dominant single theme of the Convention[4]. Not only are equality issues relevant to the implementation of all the rights in the Covenant but the prohibition on discrimination also provides a useful and specific focus for claims relating to economic, social, and cultural rights which otherwise might be dismissed as long-term objectives. Amartya Sen in one of his critical assessments of social exclusion said that, "landless-ness is similarly an instrumental deprivation. A family without land in a peasant society may be handicapped. Landless-ness can have constitutive importance in a world that values the livelihood of a peasant family having no alternative" (Sen, 2000: 15).

A fundamental aspect of states' obligations is that of non-discrimination based on the concept of equality and equity and principle of non-discrimination in the implementation and enforcement of human rights emphasizes the fact that everyone is entitled to the enjoyment of human rights irrespective of any status. However, the international human rights normative framework has a particular preoccupation with individuals and groups who are vulnerable, marginal disadvantaged or socially excluded. (OHCHR, 2002: 4).

[4] Ramcharan B. 'Equality and Nondiscrimination' in Henken L. (ed), The International Bill of Rights (1981), 246. In saying this he was refering to the ICCPR; as we shall see however this is also true for the ICESCR.

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# CHAPTER 5
# THE GOVERNMENT PROGRAM AND RIGHTS BASED APPROACH

This chapter draws on analysis of the government program and policies implemented for ex-Kamaiya of Bardiya district. It contains mainly the field findings of the research. The findings from the field and discussions organized in this chapter are according to the conceptual framework of RBA to development as described in Chapter-IV that is Good governance, Participation and Non-Discrimination.

Considering that the integrating RBA in development is still a challenging task, this chapter also discusses the limitations of a rights based approach, because speaking about rights to food, housing and similar matters in rights language often generates resistance.

## 5.1 Good Governance

As it said in chapter IV, good governance comprises the mechanisms, processes and institutions through which all the stake holders such as the state, NGOs, civil society and citizens articulate their interests. It is the process of decision-making and the process by which decisions are implemented. The field study under the good governance is an analysis of government program based on such elements as raising levels of accountability, effectiveness and efficiency, equity and inclusiveness, transparent, consensus oriented, participation and rule of law in relation to the ex-Kamaiyas' development program and policy.

**Legal Protection**

After 18 months of freedom had already passed, in February 2002 the Parliament enacted an Act in favor of the ex-Kamaiyas known as 'Kamaiya Labour (Prohibition) Act-2002. The Act reaffirms the major provisions announced during the declaration of Kamaiya freedom in 2000 July. These are: “no person shall keep or

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employ any other person as a Kamaiya laborer. Kamaiya labourers need not repay the Kamaiya loans obtained by them from their creditors" (Act, 2002: 2). In addition to the above, the Act defines Kamaiya labour, Kamaiyas loans, creditor, Kamaiya family and Freed Kamaiya. It has a provision of penalties and appeals, complaints against those who keep Kamaiyas, and a Freed Kamaiya Rehabilitation and Monitoring Committee (FKRMC with 16 members) to be formed at each Kamaiya affected district for rehabilitation of freed Kamaiyas. Chief District Officer (administrative head of the district appointed by His Majesty's government) is the adjudicating authority to dispose of the cases under this Act. Article (18) of this Act prescribes that, "Any person who is not satisfied with the decision taken by the adjudicating authority under this Act may file an appeal with the appropriate Appellate court within 35 days". Looking from the perspective of states' responsibility enactment of an Act in favor of this vulnerable group is compatible to the rights perspective. In this way the development has moved to that of obligation of state, and the law protects ex-Kamaiyas rights. The issue to be examined here is how effective is the government program and process by which decisions are implemented that protect the rights abuses of the ex-Kamaiyas. The true test of good governance is the degree to which it delivers on the promise of comprehensive human rights: civil, cultural, economic, political and social rights (UNHCHR, 2003: 1). The key question is: are the institutions of governance effectively guaranteeing the right to health, adequate housing, sufficient food, quality education, fair justice and personal security of ex-Kamaiyas. The RBA in particular enhanced accountability by identifying specific duties and duty-bearers in the development process. The government of Nepal is the central actor to provide a permanent solution to the freed Kamaiyas. Siwakoti (Human Rights Activists) in an interview to Ekchin (MS-Nepal Published quarterly magazine) says, "the other actors like NGOs are not in a situation to provide a permanent alternative to the displaced people-like Kamaiyas" (Ekchin, Aug 2001). It is the government, which is responsible for seeking a permanent and durable solution considering the specific needs of the vulnerable.

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**Fulfillment of the purpose of the government proclamation**

Devilal, one of my field respondents says, "Though the government declared to free the Kamaiyas and annulled their debts, we were precariously squatting on public land for two years (till the end of 2002) waiting for the government to do something for us. Still there are thousands of ex-Kamaiyas in Bardiya those who are struggling to get an ex-Kamaiya certificate and a piece of land". Obtaining an ex-Kamaiya certificate is essential to qualify as beneficiaries of the government programs. According to the District Land Reform office of Bardiya the following are the government programs for the ex-Kamaiyas:[1]

Land entitlement: Maximum 5 Katthas (0.35 hectare) only. The most vulnerable (group A) is eligible to receive maximum entitlement[2].

Support to construct house- An ex-Kamaiya family from group A gets a grant of NR 8,000-10,000 (US$ 105-125) and 30 cubic feet of timber to construct house. Similarly an ex-Kamaiya family from Group B (less vulnerable) gets only NR 8,000 (US$ 105). ex-Kamaiyas from other groups (least vulnerable) are entitled to land only.

Skill development training: ex-Kamaiyas from different groups are selected for different kinds of short term skill development training such as: sewing, carpentry, masonry, barber and so on.

The ex-Kamaiya families consider land as a fundamental factor for their livelihood, source of food and means of local power. Chandrakala Tharu of Janatanagar says, "Legal land holding is very important as it provides dignity and security in our lives". Similalry Devilal says, "We are land tillers. We have skills related to agriculture only, so we need enough land to till". In agrarian societies of Asia

[1] District Land Reform Office Bardiya is the concern body to implemen the government program.

[2] Government program groups the ex-Kamaiyas and provides the different colors identity card in following way:

A. Red Card: Those who possess nothing
B. Green Card: Those who possess a small hut in public land
C. Yellow Card: Those who Possess 2 Katthas of land and a small shelter
D. White Card: All others better than above three

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the issue of poverty intrinsically revolves around the human land relations of production, in which landownership and land occupy a central position. Because land is the primary productive asset, it is a source of economic as well as political power (Shrestha, 1990: 95). In a place like Bardiya where 95% of the peoples' livelihood is depending on agriculture, land is definitely a precious asset. The general rule is that the larger the landholding the greater the economic viability and power base. As the land has an integral link to the lives of these people land entitlement has become the main program for the ex-Kamaiyas. As said earlier: to be the beneficiaries of the government program acquiring an ex-Kamaiya certificate is a must. To be recognized as an ex-Kamaiya there is one crucial factor in the survey process. The survey form requires certification of the previous employers or land owner to be a legitimate ex-Kamaiya family and get enrolled in the government list.

After six months of declaration of freedom the government/MLR has conducted a base line survey in five districts. The survey reveals that in Bardiya district there are 6,949 ex-Kamaiya families, out of which 3, 155 are landless. However, at the time of conducting this research (after almost three years) researcher observed that a large number of the landless peasants, mainly Tharus conducted a sit-in protest in front of the district land reform office claiming themselves to be former Kamaiya According to their leader Sundar Chaudhary,

"There are more than 9,000 genuine Kamaiya families left out in the government survey in Bardiya district. Requirement of certification by the previous employers/land owner was one main reason to be excluded from the survey list". He also says that,

"Unlike other districts the ex-Kamaiyas in Bardiya did not break the relation immediately after the declaration of freedom. They rather waited till the standing crops became ready to harvest". At the time of declaring freedom in 2000 the monsoon had just started (mid July). Some of them had already planted their crops. Another ex-Kamaiya Binti Tharu says that,

"The survey team did not visit us. They only contacted the land owners and political leaders in the villages. Based on the meetings and consultation with those rural elite the surveyors prepare the list of the ex-Kamaiyas".

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This issue was also raised in focus group discussion. Two focus group discussions were conducted one in each temporary and permanent settlement. In both discussions the ex-Kamaiyas were unhappy about the certification and overall identification procedure. From the government perspective verifying ex-Kamaiyas legitimacy, is not completely unreasonable as sometimes people who are not ex-Kamaiyas and those actually some land and property may take advantage of the system. It is true that some procedure is needed to identify the real ex-Kamaiyas. However, the landowners are the decisive factor for the identification of ex-Kamaiyas, which creates doubts on the actual purpose of freedom. It is the state who has declared them freed, not the landowners. The state mechanisms should have some ways to find real victims but should not rely on the certification of the landowners against whom the ex-Kamaiyas have launched their movement. Demanding certification from a landowner creates room for manipulation. For instance against certifying them the ex-Kamaiyas requires to fulfill exploitative condition like low wages, sending one of their family members to work as a maid and so on.

The research reveals that high numbers of ex-Kamaiya without identity cards are neglected. The survey process and results has created dispute and controversy. A national daily, *The Kathmandu Post* writes, “There exists disputes in the actual number of ex-Kamaiya. The left out Kamaiyas are growing impatient on the delay by the concerned bodies in deciding their fate” (The Kathmandu Post July 27, 2003). The high numbers of left out groups are now demanding that they be granted an ex-Kamaiya status and legal entitlement. To verify this information the researcher has visited the District Land Reform (DLR) office in Bardiya. According to Ram Prasad Sharma (an officer in MLR), “The government has received application from 9,200 ex-Kamaiyas asking for land entitlement. The investigation process is taking place”. He also agrees that the issue of certification by the landlords has left many ex-Kamaiyas out of registration. As the landlords did not show any interest to certify and recommend them. In Bardiya now distinctly two groups of ex-Kamaiya are visible; a small group that has received land entitlement from the government living in permanent settlement or *Theai Siwir* (in local terms) and a big group without

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government entitlement but living in the land encroached by themselves as temporary settlers known as *Aasthai Siwir*.

In the temporary settlements government line agencies are reluctant to implement the development programs considering them as illegal settlers. Moreover, the ex-Kamaiyas living in temporary settlement are treated as land encroacher. The forest authorities often fired such settlements and put the ex-Kamaiyas into jails for several months on charges of encroaching forest land. Similarly on the attitude of forest's authorities, Bathini Chaudhary of Bangai informs,

"Women are the first victims of the police and people from Ranger's office (forest authorities)". She further said,

"They threats and destroy their huts without any kind of warning. They even destroy the crops in the fields and the administration takes their side". In Nepal's forestry law the District Forest Officer (DFO) has enormous power. The Forestry Protection Act authorizes the DFO as one bench judge on issues related to forest control. This position holds the power of prosecuting and the decision for punishment. Every district forest office has its own jail in its compound. On the same issue Gurung writes, "If someone is found to have encroached even one Kattha of land, he would be fined up to NR 10,000 and on the decision of *Hakim* or the District Forest Officer, the guilty person could be sent to Jail for as much as one year or be fined NR 10,000" (Gurung, 1999: 92). In Bardiya district too the forest department has its own security guards scattered in their five six areas. The Ranger who is in charge of such Area offices has a number of security guard under his command. At the community level such forest security guard and rangers often act harshly against so called unauthorized settlers. These powerful forest authorities often victimize the ex-Kamaiyas who are unaware of the forest Act and are so-called illegal landholders. The NGOs have launched programs like outreach and flexible classes for education, awareness, installation of tube-wells (drinking water) and so on. Petersen in *The Himalayan Times* writes, "It is highly problematic that all those ex-Kamaiyas who are not yet formally acknowledged as former bonded labourers seem to be left out in a vacuum where the government does not take responsibility and thus give the NGOs a hard time deciding how to deal with the dilemma of supporting people who reside

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illegally"(*The Himalayan Times,* 25 July 2003). This issue will be discussed in length under the section discrimination.

The accountability of the government towards ensuring rights of landless ex-Kamaiyas questions such acts of government. However, from the government perspective it can be argued that protection of public and forest land is the government's responsibility. It would also be worthwhile to discuss the issue of land encroachment by the landless settlers and the politicalization of the issue. There has been a trend that just before or at the time of election encroachment becomes common either by the landless people or by landowners who would use their Kamaiya workers to do so (Gurung, 1999: 91). Election is a good time for the encroachers as during the election no political parties will go against them and even the district forest office remains silent. So the government's action against the land encroacher in some extent can be called a legitimate one as it cannot be completely overruled that in the name of ex-Kamaiya people with land also attempt to encroach in the settlements and political parties sometimes remain silent or support their activities. This situation reveals that the government's delaying to settle the ex-Kamaiyas may add more people claiming as ex-Kamaiyas. In fact the government has not been able to solve the ex-Kamaiyas rehabilitation problem for almost four years since the government decree delivering their debts annulled and the Kamaiya's claiming land could not enforced. For Pradeshu (an ex-Kamaiya) governance would be to solve their problem. He thinks that political turbulence (Maoist insurgency, absence of democratic elected local government) in the country is hindering their problem to solve. Some of the ex-Kamaiyas even thinks that the system that they had before (to work as Kamaiya with landlord) was safe for them as they did not have to face too many hassles like they are facing now. This was the view of Govinda Tharu and Jamuni Chaudhary. Both of them are from temporary settlements. They are afraid because they do not know whether the same piece of land will be legalized in which they are residing or they will be shifted some other locations if they get the status of ex-Kamaiyas. In their understanding, "to let them permanently settle in the place where they are at present or move utmost to a very nearby location according to their choice (participation) is good governance". This is in line with an element of good governance that, 'the state should account people's participation and their well being'. Further in a responsive

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governance institutions process and individuals should be available to the public and should serve them within the reasonable time. The above discussions reflects that much of the problems associated with non-performance and under performance the rights based approaches in the implementation strategies.

**Government Entitlement and Addressing the Problem of Poverty**

At the time of conducting this research, in Bardiya district 2,340 families have received identity cards from which 2,326 are entitled land[3] out of total 6,949 ex-Kamaiya families (identified by government survey). The ex-Kamaiya families are allocated land up to maximum five Katthas. Their settlements are known as *thai siwir* (permanent settlement). My field research reveals that in the permanent settlements there exists a variation to the government program of allocating land. In Janatanagar settlement they are entitled five kattha (0.35 hectare) of land whereas in Shantinagar only three kattha (0.21 hectare). Out of the 20 ex-Kamaiyas interviewed 14 are discontent with this discriminatory allocation. Six of those (are also in same poverty group) did not have any comment, they are content that they have built their house in their own land. Their impoverishment and poor living condition is apparently visible. In focus group discussion all of them informed to the researcher that the production of the land provided by government could feed their family only for a period of 5-6 months.

The issue of discriminatory land allotment is discussed under the section discrimination in later part of this chapter. This section discusses the economic productivity of the land and maintaining the livelihood of the ex-Kamaiya families. Economically the grain harvested from the entitlements is insufficient to feed an ex-Kamaiya family of 6-10 people for a year. Devilal from Shantinagar informs that, “the legal entitlement is a small piece of land and the food harvested is hardly enough for 5 months of my family of seven members”. On this *The Space Time daily* writes that, "the land entitled by government to ex-Kamaiyas can hardly manage their life for 4-5 months as the amount of land provided is so meager (*The Space Time daily*, Nov –11, 2002). On the one hand the present law allows no one to work as a Kamaiyas/bonded labor, while on the other hand jobs are not easily available. So, the freed Kamaiyas,

[3] Information received from Bardiya district land reform office (March 13, 2004)

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who hold only a little land, are compelled to work under another locally known system called *Jirayat*, which hold the elements of bonded labour. *Jirayat* is a new exploitative share cropping system under which the ex-Kamaiya families are asked to do additional work by the landowners, for no or very minimum wages. The *Jirayat system* is discussed in detail in the next section.

The issue of land entitlement to the landless has to be seen in broader prospective. If individuals or groups in agriculture do not have access to land to work and are not able to feed themselves the state mechanisms has the obligation to provide access to productive land resources (Shrestha, 1990: 95). Article 11 of ICESR right to food and Article 6 right to work suggests implementing agrarian reform for landless in fulfilling access to work that will contribute to realizing adequate standards of living. As Shrestha states, Conversely, landlessness is a cause and effect of poverty. Shrestha says, "a survey of recent literature on rural poverty in Asian countries reveals that landlessness has emerged as important demographic as well as development issues" (Shrestha, 1990: 95).

On Nepal's Report to the ICESCR, the Committee expressed its concern about the failure of the government to address land and agrarian reforms properly, noting that's tenants have not obtained security of tenure and that a greater number of peasants do not yet possess any land; the fact that although the Kamaiya system was abolished in July 2000, the emancipated Kamaiya are facing many problems, including lack of housing land work and education for their children the low legal minimum wage noting that it does not provide a decent standard of living for workers and their families in particular in the agricultural sector' (Committee on ICESCR, 2001). The above discussion and finding reflect that the problems related to livelihood of freed bonded laborers have remained unchanged. It can be argued that the status of ex-Kamaiya has changed which is from 'bonded labour' to 'rural poor' but the continuous impoverishment is endangering the freedom aspect. This may increase the potential of these people to fall into indebtedness and bondage again as the impoverishment is a main for vulnerability.

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**Revival of Bonded Labour**

A small group of ex-Kamaiyas has decided not to accept the government entitlement of maximum five Katthas (0.35 hectare of land). Such members of ex-Kamaiyas are living in the old villages where they used to live before. GFONT a trade union organization has conducted a sample survey among 150 ex-Kamaiyas in 2001 suggests that 16 percent of Kamaiyas in an average are still working within the system, among them 5 percent are on same terms and conditions as before while 11 percent under new terms and conditions (GFONT, 2001: 15). There are reports that during this period many ex-Kamaiya started to get recruited into the various exploitative kinds of agriculture labour practices again. The following case studies reveals that the numbers of ex-Kamaiyas recruiting into the old system is increasing.

Maghu Chaudhary and Bikhu Tharu were two young ex-Kamaiyas interviewed from ex-Kamaiya families, (see list of interviewees in Appendix-3.1). These two informants were out of 20 interviewees who did not move into the government entitled settlements. Both of these married young men with their children and parents are living in their same villages but in a slightly different arrangement. Maghu has passed his high school exam which is very rare among ex-Kamaiyas. He is a community barefoot journalist for a Tharu radio program called "*Khyala"*. BASE, a local NGO produces a 30 minutes radio awareness program in the Tharu language and broadcast it (INGO support them to buy the time) through state run radio called 'Radio Nepal' in every alternative days. Bikhu one of the interviews says,

"Their *Kisan* (the landowners) has provided them around four Kattha (0.28 hectare) of land to use and that's where they grow lentils, wheat and maize. To get a good crop they have to use fertilizer. They borrow fertilizer from the landowner instead of the money, but then they have to repay one and half times the amount when they have harvested. Any kind of thing like that seed or pesticide, they have to repay one and half time at harvest". Now since Bikhu is also earning he buys fertilizer and seeds that they need. Therefore, with the income from the farming of *Kisan's* land and from their piece of land (that the *kisan* has provided) they can feed their family of 10 members. Bikhu further says,

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> "We have paid our debt. However, still there are some occasions like festivals, in the period of sickness we need to borrow money from the *Kisans*. We decide not to move into a new location though the places are inside the district are very far, somewhere near by the sandy river. Such lands are not fertile too. We would have been happy if the land was provided near our village".

The ex-Kamaiya were never asked for their preferences (right to participate). The land that the government was going to give them was far from the place they were living, and was infertile too. Maghu another informant from the same village told a slightly different story of the continuation of exploitative labour conditions. He says,

> "In Rajapur village people are still Kamaiya. Though the level of exploitation has decreased still there exists Kamaiya system in our village. There are ten- fifteen big *kisan* families those have now moved into Nepalgunj (a town 90 km. east) or to Kathmandu (capital) because of security reasons also. [It is a Maoist insurgent area and they target the big *Kisans.* These kisanas visit us once in a year to collect their 50% share or ask their Kamaiyas to bring their share of grains in bullock-cart or in tractor to a nearby rice mill on the highways. The Kamaiya though cultivate their land on share crop basis [production is shared equally], one family member of the share cropper [normally a daughter] is send to *kisan's* house (wherever they live) as a domestic maid".

Maghu further informed that,

> "There are some middle level Tharu farmers/*Kisans* living in the villages have also employed Kamaiyas in different conditions like some of them provides 11-12 sacks of paddy, one quintal of wheat and pair of clothes annually. In addition the Kamaiyas are provided a small piece of plots for making a house and cultivating lentils and vegetables. Such middle level *Kisan* possess 5-6 *bighas* [3.5 to 4.5 hectares] of land. Maghu's family was bonded to such Tharu *Kamaiya* family who were less exploitative compared to non-Tharu *Kisans*".

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The above discussion reflects that the bonded labour system is still in practice in various forms. The exploitive conditions of payments still exist. The Kamaiya Labour Prohibition Act-2002 has provision of *jariwana* (fine) ranging between NR 15, 000-25,000 (US$ 200-330) under the section on penalties (article 16 of the Kamaiya Act). The above discussion also suggests that some of the ex-Kamaiyas have paid back their annulled debt to the creditors contrary to the Act. The aforementioned Act says that "after the commencement of this Act, Kamaiya labourers need not repay the Kamaiya loans obtained by them from their creditors (Chapter 3, Article 5). The Kamaiyas who have entered into share cropping with the big landlords have also experienced the revival of the Kamaiya/bonded labour system. The daughters and female members are suffering from the abuse of rights as they have to engage work for unlimited hours with minimum or virtually no payment in landlords' houses far from their villages.

Devising specific mechanisms and detailed institutional arrangements is an essential feature of the Rights Based Approach. People have to be able to relate domestic legislation to human rights and to identify the breaches of these laws as violations of human Rights. The development of the Kamaiyas' is about much more than just introducing the Act. It is about creating an environment in which they can develop their full potential and lead productive, creative lives in accordance with their needs and interests. On the above situation, *The Kathmandu Post* reports that, "due to abject poverty, some ex-Kamaiya freed just three years ago have been forced to keep their children in bondage at their landlords' homes, even as some 20 families of freed *Kamaiya* in Dang district, moved back from the pitifully small plots that government has provided, to their landlords houses this *Maghi* (Tharu festival). The disenchanted ex-Kamaiya staying in Lalmatiya and Pakhapani area blame the government for having declared them free only to land them into a more pitiful state" (*The Kathmandu Post:* Jan 20, 2004).

**'Jirayat' system a new way of exploitation**

To analyze the issue of poverty aspect how the freed Kamaiyas may indulge into the debt bondage system again I had a thorough interview with one of the oldest

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informants Pradeshu where I could see in his kitchen there is a bag of rice or wheat, some lentils and some utensils. Outside in the courtyard some leafy vegetables are grown. The land that they have received lacks irrigation facilities. This family is entitled five kattha (0.17 hectare) of land. Pradeshu says that, "the land provided by the government is not sufficient to feed my family for a year". So ultimately we have to firm the *kisan's* land under *Jirayat* system. Under this system the products are equally divided between the landowner and the tenant farmer. The tenant farmer gets half of the production on that land under the condition that he works throughout the year for the landlord for no wages. Pradeshu's family is farming three bighas (2.01 hectares) of land belonging to BamSigh, a landowner from Bhojpur village. For using the three *bighas* of land under 'Jirayat', Pradeshu also tills another three katthas (0.21 hectare) for his landlord but without receiving any payment for this extra work. Moreover, two of his family members have to work to his landlord's house doing household chores all the year with no wages. When asked about the chores at the landlord's house, Pradeshu says,

"My wife and my daughter have to do all the work including cleaning the cowshed, collecting fodder, doing the washing-up and doing other work in the kitchen. The landlord makes us work throughout the day, but we do not get any food. At eight in the evening, we come back to our place and cook food for ourselves".

When asked about the wages, he says,

"No wages at all except they provide two pairs of clothes a year for the extra work".

Answering the question why the tenant farmers work for such low wages, Pradeshu says,

"There are 10 members in our family and we have five kattha (0.35 hectare) of land which does not produce enough food for us. So, we are bound to work on the landlord's land on '*Jirayat'* basis. It is not likely that we will earn enough money even if we go elsewhere to work. Work is not available. So, we have no option." After the abolition of the Kamaiya system, the number of tenant farmers who work as *Jirayat* laborers is growing very fast. On this GFONT a trade union organization reports, "A number of Kamaiyas in all districts still can be found remaining with landlords in the previous terms and conditions whereas some are working in a new agreement

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especially under sharecropping in the changed context. The new pattern of sharecropping has started again to exploit women and children of the free Kamaiya families. The landowners have given their land on sharecropping to their former Kamaiyas but in a condition to use the adult female members or children for their household work. This indicates towards a changing form of exploitation of Kamaiya families after the declaration of liberation" (GFONT, 2001: 3). This issue was also discussed in Janatanagar focus group discussion (a permanent settlement). The members of the focus group discussion informed that, work is not available. It has been more difficult for them to find land to use and work on. So they have to accept the conditions lay down by the *Kisans.*

Analyzing the above information and going by the account on the basis of eight working hours a day for six days, the minimum daily wages as fixed by the government is RS. 65. The calculation gives a figure of NR 18,720 (US$250) in a year as the minimum wage that each worker should get for doing domestic chores. In addition, they also till 3 katthas of land for the landlord. If farming is properly done in time, three katthas of land yields NRS 4,000 rupees (a year). That amount also goes to the landlord. The tenant farmer gets just two pairs of cloth as the annual wages for two persons or they can take NR1200 (as Pradeshu informs). "If farming is properly done in time, a bigha of land yields 30 to 32 quintals of rice, 15-18 quintals of wheat and three quintals of mustard" (Bardiya district Agriculture Office). The Researcher has calculated it in terms of money to find out the annual income of the Pradeshu's family. Based on the price in local market at Gulariya three bigha of land will yield NR 120,000 (US $1600). Dividing it into two families each gets US $ 800 a year or US$ 67 per month. Expenditure like fertilizers, seeds (equally borne) etc are to be covered from this income. For a family of ten members, this income will not be enough to meet all the expenditures for a year. However, comparing the Kamaiya system in which the kamaiyas used to provide 10-12 sacks (70 Kg. in a sack) of paddy and family members being virtually involved without any pay *jirayat* may be less exploitative but the position of women members and their labour has no value. Similarly the extra work done by Pradeshu is also not valued.

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One of the woman interviewees Jamuni Chaudhary says,

> "If the farm size is higher the *Jirayat* system gives a high amount of production. Nevertheless, this is also like a kamaiya system because our family members have to take care of the landowner's entire household work, kitchen gardening and other domestic work. If we do not accept this we do not have any alternative employment. The landowner says you can quit the agreements. There are many ex-Kamaiyas who may come and do the work in the same agreement. Since we are landless we have to accept all the conditions laid down by landlords. If we do not work like this where will we go? Who will help us?"

The above discussion suggests that the ex-Kamaiyas are working in exploitative conditions. Their low income, powerlessness, social weakness and vulnerability causing them again to recruit into exploitative practices of low wages that may again push them into bonded-ness. The lens of human rights appraisal can provide insight into the causes of poverty that result from a denial of human rights. International law/treaties help to identify the solution. But it so happens that the vicious circle of social and cultural system makes it difficult for realization of human rights in a poor community. Article 2 of the ICCPR states that, 'the state parties are required among other things to ensure that an effective remedy for violations is available to provide for determination of claims by competent judicial, administrative or legislative authorities and to enforce remedies when granted". States are expected to undertake at the national level all necessary measures for the realization of the right to development and to ensure inter alia, equality of opportunity for all in their access to basic resources, education, health services, food housing, employment and the fair distribution of income (UNHCHR, 2003: 2). In the UN millennium report the UN secretary general emphasized that "better governance means greater participation coupled with accountability".

However, the meaning of responsibility for assuring rights is unclear in the international conventions. It becomes difficult to materialize it when the capabilities of states are so diverse. Most of the present dominant development policies both by the government and development organization lack a right based approach. Groups

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like Kamaiyas are always left out as they are unable to participate actively because of the disparities caused by the social structure based on caste, class and hierarchy. Given its positive aspects of rights based approaches, there are challenges facing the rights-based perspective. Action Aid in its reports states, "How can an individual claim access to their right? The poor, jobless, without housing, without social security, have the right to demand these rights, but how can they become real"? (Action Aid, 2002:23). We are again confronted with reality on the one hand and rights on the other.

**Rights to Information**

Transparency and accountability are current buzzwords of governance being used commonly by governments and international institutions all over the world. They have been a part of the debate in Nepal too. The discussion in earlier sections reflects that the government of Nepal has made national and international commitments to protect the rights of the people. A right to information requires transformation of the commitments through creating mechanisms of redress and accountability that can ensure entitlements, respond to denial and violations, and ensure accountability. The issue of rights to information has recently come alive with renewed vigor as it is one of the important elements of rights based approach. Good governance requires that enforcement is done in a manner that follows that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. It also means that enough information is provided that is easily understandable for ex-Kamaiyas.

The ex-Kamaiya struggle in 2000 was sparked off by an initial demand for their minimum wage, and it grew within a short period to a movement and campaign for comprehensive rights. During the Kamaiya movement the media were active and there has been a sprouting of concerted efforts supported by a coalition of rights organizations and individuals. The information flow has had a good role in acquiring freedom of the Kamaiyas. Now in the aftermath of freedom they need to be aware of all available protection measures to ensure that they take full advantage of the provision made for them in the national constitution, Kamaiya Act and in the international conventions. Article 19 (2) of the ICCPR states that everyone shall have

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the right to seek, receive and impart information and ideas of all kinds, as is expressed also in Article 19 of the Universal Declaration of Human Rights. The right to information is enunciated in Article 16 of the Constitution of Nepal that provides every citizen the right to demand and receive information on any matter of public importance.

For a vulnerable group like the ex-Kamaiyas this right has special significance since the exercise of the right to information will enable them to claim their rights to freedom, land entitlement, minimum wages, education etc. For them the seeds of the Right to Information demand lay in the struggle for minimum wages. There is a minimum wage fixed by the government (NRS 65 or US$ one). This takes an additional importance for ex-Kamaiyas but most often minimum wages are not paid. The minimum wage declared under the law is the de facto maximum wage. As discussed earlier under the *Jirayat* system the ex-Kamaiyas are paid much lower wages than the wage rate fixed by the government.

One of the reason argued work is not available so they have to accept the conditions lay down by the landowners. The researcher asked the ex-Kamaiyas whether they are aware of the provision of the Act in relation to minimum wages. Ten out of 20 ex-Kamaiyas interviewees stated that they know the minimum wages but only one of them is aware of the penalty mechanisms stated in the Act. Maghu a bare foot journalist was able to tell the researcher about the provision for punishment for those who kept bonded labour or continued the practice. This shows that the provisions of penalties for non-compliance are not known to the ex-Kamaiyas. To mobilize these vulnerable in order to have the law enforced the state and non-state actors did not have any information dissemination system.

In research area radio is a popular means to inform and disseminate information. In a focus group discussion in Bangai settlements the researcher was informed that six of the ex-Kamaiyas have heard about the *jarimana* (fine) through radio but not sure exactly what was the *jarimana* for those who keep Kamaiya and pay low wages. The provision of the Kamaiya Act that "No person shall employ agricultural labourers without wages or at wages below the minimum wages rates fixed"[ Article 13 (2) ] is not in practice. The articles of the act are not disseminated to the ex-Kamaiyas. They have never seen the Act made for them. In a focus group

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discussion in Bangai settlement eight out of fourteen has heard about the existence of the Act but they have not seen it or read it.

Compared to Bangai (temporary settlement) the group in Janatanagar (permanent settlement) was better informed. Here out of the 19 members who took part in the focus group discussions, 10 have heard about the Act but similar to Bangai here also none of them have seen it or read it. The research shows that the ex-Kamaiyas in permanent settlement in Janatanagar were relatively better informed and have better living conditions. This permanent settlement is located near to the district headquarters, Gulariya. The ex-Kamaiyas in this settlement involved in some income generation activities too. They have relatively better access to the market. They produce vegetables and bring it to sell them into nearest market. This was the settlement where researcher found that the government has entitled maximum amount of land i.e. five *katthas*. Some of the households have installed tube wells on their own for drinking water that also helps them to irrigate the vegetable garden. Perhaps due to closer location of the district headquarter it was a kind of settlement that got better service from the district line agencies like agriculture, health and such others. In this settlement according to the informant 15 families own radio. Whereas in Bangai according to Chandrakala Tharu, There are only five radios in 85 households. To listen to a Tharu radio program called *khyala* usually the ex-Kamaiyas gathered in groups in those houses those having radios. For them it is their favorite program. Due to limited number of radio sets not all ex-Kamaiya families are benefited with such an information system.

The non-state actors/NGOs have though launched activities like in-formal classes to aware and educate the adult ex-Kamaiya women in the settlements. The content of such education materials are not specific to a situation like of the ex-Kamaiyas. The researcher observed one such informal class in Gujrana settlement. It was a class run by a NGO called *Dalit Sewa Sangh* (Dalit Welfare Association). There were participants from Tharu and Dalit families. The text book and materials were in the Nepali language. The key words of the informal lesson were not related to the local situation like Kamaiya, wages, exploitation land rights; Kamaiya Act related issues and so on. Though the facilitator generates some discussion but the discussion was limited to the contents of the text those as I said were not related to the local

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context. The group discussions have made the women participants vocal but they are not made aware of the content of the Act and laws that protect their rights. The deliverance of the content of their rights seems to be not taking place as the research shows that the ex-Kamaiyas are not aware of the content of the Acts that safeguard their rights. The right to information and transparency is not considered as a right.

The above discussion suggests that though the state and non-state actors are involved in information dissemination there is limited scope to inform the ex-Kamaiyas on their rights with the existing approach. The ex-Kamaiyas have little or no access to the means (radios), types and the required information that could lead them to enjoy their rights.

## 5.2 Empowerment and Participation

Empowerment and participation are interrelated and leads to the strategy for participatory development. My field study is based on understanding of the critical ingredients of participation as identified in Chapter IV, namely participation in decision making, participation in implementation and participation in monitoring and evaluation.

**Participation in Decision Making**

The rights perspective on participation demands the participation of the affected people at the program design level. Such participation must be meaningful and effective. Participation in this sense necessitates the creation of organizations of the ex-Kamaiyas to take greater responsibility for their development and deciding on their preferences. The Indian National Academy of Administration, which trains government workers, made an extensive study of bonded labor and rehabilitation in 1989-90 in India. They examined hundreds of local schemes and saw what had worked and what had failed. The basic law was fine they said, when it was fully carried out, but some refinements were needed. According to their experience freed bonded laborers should have a say in the type of the land/rehabilitation they receive. The land given to the freed laborer should be capable of producing food, and the laborer should be given a clear and ironical deed to the property (Bales, 2000: 229). This indicates that authorities need to understand the rights perspective of bonded

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labourers that they should have a say in their rehabilitation program such as land allocation. Participation in the program and land entitlement are their rights. In the previous section (under governance) the case of Rajapur village where ex-Kamaiyas refused to receive government entitlements is an example of denial of their rights to participation. The ex-Kamaiyas of Rajapur are still with the previous landlords because they did not have a chance to put their preferences in the land entitled for them. There were enough reasons like the land entitled by the state was located far, not fertile, small in quantity etc. Great things can happen if a bonded family can achieve freedom and economic independence with their participation in preferences, but often their rights are not addressed comprehensively. Just about everything that could go wrong with the rehabilitation program has gone wrong. Here follows another example that this researcher has found. According to Pradip Chaudhary (one of my interviewees) of Bangai,

"In some places land paper is provided to the ex-Kamaiyas for the same portion of land belongs to another marginalised group like Dalits. The Dalit families are living there for last 12 years". Government may argue that the land where the Dalits were living was illegal. But Dalit families argues that they were living there since long (as Pradip informs). Such decisions of government have created a conflict between ex-Kamaiyas and Dalits. Ultimately the ex-Kamaiyas have not been able to move into the land provided by the government. It was only after six months of their declaration of freedom the government decided to provide them a maximum land entitlement of five kattha as an immediate rehabilitation measure. Sundar Chaudhary one of my respondents furiously says,

"We have demanded at least ten kattha of land. They did not ask us to participate in making decisions. The official people think that we are illiterate and ignorant". He further curiously asks to the researcher,

"How come the *Sukumbasis*[4] (landless migrants) were entitled ten kattha of land and we were not? We are never part of the decision making". The issues that arise here from the above findings is the approach and understanding on participation is unclear and very traditional in the government's development programs. The

[4] Sukumbasis term is used for landless migrated from the hills. Refer section discrimination for detail.

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decision makers and the claim holders do not meet to design the program. To the officials the ex-Kamaiya are ignorant and to the ex-Kamaiya the official are arrogant. For ex-Kamaiya, land entitlement programme is the pivotal one. In both group discussions [at Janatanagar (19 participants) and Bangai (14 participants)] inform researcher that their skill is limited to agriculture only. Practicing subsistence farming is only way for their livelihoods. Further on the issues of land ownership fourteen interviewees says that, "the land ownership provides them a sense of security".

It goes without saying that a government program of land entitlement has a direct relationship with their livelihood and security. It also points to the other aspect that is to capacitate the government authorities and the decision makers on the human rights issues of the claim holders. If government is going to stop the practice of bonded labor the rights of the ex-Kamaiyas need to be protected by integrating the values of rights based approach to development in the government's land allocation program. Theoretically Ex-the ex-Kamaiyas are free and independent but without any knowledge or power to stay that way. Their participation rights begin to be relevant at the time of initial decision making of their program.

Field interviews and focus discussion were concerned on practices and application of participatory approaches on realizing preferences in the programs made for them. To be the beneficiaries of the government programs citizenship is a prerequisite. An individual must have citizenship cards for making legal contract such as registering land ownership and tenancy rights. Focus group discussion and interviews were also concentrated on access to citizenship to the male and female Kamaiyas. Denial of citizenship clearly shapes the flow of resources to persons and social groups. In practice, those who can show the citizenship card of their father or another close relative are granted citizenship. Usually those with a landownership card do not face any problem in getting citizenship in Nepal (Buggeland, 102: 1999). These documents are considered evidence. However, problems arise for people like ex-Kamaiyas who don't have any such relevant documents. While they were living as Kamaiyas most of them did not have citizenship. They neither have birth certificates, landownership cards (as they are landless) nor can they show the citizenship card of a close relative. The requirement like an applicant's father or other close descendants have to be citizens is the main obstacle that the group like ex-Kamaiyas from Tharu

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indigenous group faced. Moreover applying for citizenship involves some cost and considerable time. For ex-Kamaiyas even to bear the cost to go to the district headquarters, asking literate to fill-up their firms and provide photos was an obstacle. In Nepal after the democratic government was re-established in 1990 obtaining the citizenship procedure was made easier. Presently it requires the certification of locally elected village bodies such as VDC chairperson, vice chairperson or ward chairperson. Previously the certification authorities used to be district authorities such as heads of *District Panchyat* (District Chairperson), the mayor/deputy mayor of the municipality or a government officer.

In research area out of the 20 ex-Kamaiyas interviewed 14 of them possess citizenship. One man and five women did not have citizenship. An ex-Kamaiya man like Amashree Tharu who has not yet obtained citizenship share a story of hostility they felt when they approached the authorities and the bureaucratic hassles that discourage them to approach for citizenship in District Administration Office. According to Basanti Chaudhary (an ex-Kamaiya woman),

"After the declaration of freedom the need of citizenships was seriously realized by us as it is essential for obtaining ex-Kamaiya identity and land registration cards. However, in a Kamaiya family mostly it is a man who gets preference to go to the district headquarters". The field interviews tell out of six those who did not have citizenships five were women. Since the woman do not have citizenships in most cases the land are also in the name of their husbands. The research shows that in the research area men have an important role in the decision making of family spheres. Some literature however suggests that Tharu women are treated as equal to men (Bista, 1992: 62). Out of ten ex-Kamaiyas interviewed from permanent settlements seven says men owe the land and are also the head of the households. In the domestic sphere, women may have more say than their man folk but women remain tied to the home. Basanti further says that,

"In external decision making and owing the property it is the man who holds the major saying and who leads the whole decision making process". Comparatively men are free to go anywhere to attend meetings and gatherings in nearby areas. If it is something related with going to the district headquarter it is the man who should go and settle the issues like land registration, making citizenship etc. The female

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members of Kamaiya family members have to work at least twelve to fourteen hours in an average day, seven days a week. They have to work on the farms, look after their children, livestock and attend all domestic chores including cooking, cleaning, washing and processing food such as husking and grinding.

**Voting Rights and Participation in State Affairs**

In a democratic society casting a vote is a basic right of the people. It is an exercise through which people elect their representatives who make decisions for the programs related to their development. The degree of freedom of political expression and participation in state affairs can be judged by examining the voting behavior of the electorate. Inquiry made on regarding whether the ex-Kamaiyas voted in the elections (for parliament in 1994 and for local bodies in 1997). Both elections were held when they still were Kamaiyas and living with their landlords. Questions were asked regarding whether employers encouraged or motivated them to vote. It turned out that 13 out of 20 had used their voting rights in the 1994 election. However, six of them said that their employers have urged them to vote for a certain political party which they actually had done. Devilal Tharu one of the six says,

"I also obeyed my employer as Kamaiyas at that time were counted as part of the landlord's wealth and patrimony". The findings show that six Kamaiyas have voted, but not according to their own judgment and interest. The remaining seven said that they were not influenced by their employer's suggestion. The researcher asked these seven what had motivated them not to be influenced by the employers' suggestion. They said they voted on the party, which had an agenda of allocating land for the landless i.e. CPN-UML (Communist Party of Nepal -United Marxist Leninist). Maghu one of the interviewee says that,

"The advent of a democratic environment (after 1990) had made an impact to aware the Kamaiyas too. In the local and national elections after the advent of democracy the ex-Kamaiyas seems to have become aware of the importance of voting even though they were still living as Kamaiyas".

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He further says that,

"In the local election of 1997 the CPN-UML (Communist Party) cadres had assisted them to renew their names on the voters list". All of the 20 interviewed said that, they had voted for CPN-UML in 1997 election as the CPN-UML's election slogan was land reform that had attracted the Kamaiyas. The above indicates that the agenda of land reform is relevant to their life and that they therefore participate on such issues. It also shows that in 1994 some of them did not understand the significance of voting whereas in 1997 election they were better aware and their participation had also increased.

In relation to land-related issues, a Tharu Human Rights activist Ekraj Chaudhary writes, "Tharu farmers have always been the productive force of this region. It was the ancestors of the present Tharus who changed the rough terrain of Bardiya into arable land. Unfortunately, these diligent Tharu farmers could never become the owners of the land they tilled. All their descendants remained under the control of the landlords" (Chaudhary, 'Ekchhin 2002: 12). The agenda of land reform has made the communist parties of Nepal popular among the marginalised like ex-Kamaiyas. In the 1997 local election the UML got the majority of the votes, whereas in the 1994's parliamentary election they were elected as the second largest party and got the opportunity to run the government in coalition with a rightist party. However, that government existed only for nine months. During that period although the coalition government had conducted a study on land reform it was not able to introduce any bill (Roberston and Mishra, 1997: 26). Even if the CPN-UML had formed the government one cannot predict whether the Kamaiyas would have had a better deal in land rights. One may conclude that issues related to land increases the participation of the ex-Kamaiyas in the election process but after the elections are over groups like ex-Kamaiyas are ignored.

**Participation in implementation**

As discussed in chapter IV participation is an active process by which beneficiaries such as the ex-Kamaiya groups, should influence the direction and execution of the development projects which concern their well-being in terms of income, personal growth, self-reliance or other values (Paul, 1987: 2). Development

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project can be seen as a process of empowerment of the deprived and the excluded. This view is based on the recognition of differences in political and economic power among different social groups, classes and castes. Participation in this sense necessitates the creation of forums and organizations of the beneficiaries. In this section I will discuss the participation aspects of the ex-Kamaiyas in the forums and structures created by the Act and their participation in implementation of the development programmes. The Act has a provision for a district level committee to be formed in each of the five- Kamaiya affected districts. It is called 'Freed Kamaiya Rehabilitation and Monitoring Committee'. According to the Act this committee has the responsibility to implement rehabilitation programs for the ex-Kamaiyas. In its preamble the Act states that, "It is expedient to make necessary provisions in respect to prohibiting Kamaiya labor and rehabilitating and raising the living standards of freed Kamaiyas from the viewpoint of social justice"(Act, 2002: 1).[5] I will now examine the participation of the ex-Kamaiyas in this committee particularly in Bardiya district.

The Freed Kamaiya Rehabilitation and Monitoring committee is consists of 16 members headed by the chairperson of District Development Committee (DDC)[6]. It comprises the following members: Chairperson of the DDC, Chief of the District Police Office, the head of the District Education Office, District Forest Office, District Land Reform Office, Labour Office, District Agriculture office, an officer from District Administration Office, one person from among chiefs of the district level banking offices, one person from among district level organizations and associations related to peasants, not more than three persons from among trade union organizations and associations, one person from among non-governmental organizations, one person from among freed Kamaiyas and the Welfare Officer (Act, 2002: 74). On the nomination procedures the Act prescribes that out of 16 members nine are government bureaucrats (the heads of the district line agencies) whereas the DDC chairperson appoints the rest. The DDC Chairperson also nominates the one ex-Kamaiya member as the representative of the

[5] Copied from the translated version. The Act was translaed by by Regmi Research (private) Ltd. Lazimpat, Kathmandu

[6] DDC is a district governing body formed by the elected representative every five year.

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ex-Kamaiyas. The committee's structure explicitly shows that there is a very nominal participation of the claim holders. To ensure the participation of the claim holders in Rehabilitation and Monitoring Committee there is no mechanisms at the community level. A Rights Based Approach demands the effective participation of the beneficiaries in their programs. In the present scenario the participation of the ex-Kamaiyas is merely a ceremonial. In the development program and policies the importance of participation is being realized very much. According to the UN declaration on the Right to Development, such participation must be "active, free and meaningful". The research shows that there is no active and meaningful participation of the beneficiaries. They are not really assigned an effective role in the decision-making process.

To examine and explore further the role of ex-Kamaiyas the researcher has participated as observer in one meeting of the Bardiya district's Freed Kamaiya Rehabilitation Committee. The purpose of the observation was to understand, assess and examine the role and participation of the ex-Kamaiyas' representative, role of committee members and other stakeholders in the decision-making process. The researcher has earlier obtained permission from the Local Development Officer (LDO) of the Bardiya District to participate in such meeting.

In this meeting one representative was also present (joint secretary from Ministry of Land Reform (MLR). Therefore, this meeting had some special value. Some local political party leaders were also invited. At the beginning of the meeting the researcher came to know that this meeting was organized after 13 months (a long gape). Ramdas, representative of the ex-Kamaiyas, was not very vocal in the meeting. It was a round table type of meeting. Throughout the meeting mainly the authorities were speaking without listening to each other. Ramdas seems to have difficulties in expressing himself in Nepali language, but he was allowed to speak in Tharu as well. Tharu language seems to be understood by the majority of the local leaders, but not by the government authorities.

The agenda of the meeting was about issuing registration cards for the big number of left out ex-Kamaiyas those were living in temporary settlements. Thousands of applications that the government has received from the poor families mainly Tharus were asking to provide for ex-Kamaiya status. The one hour meeting

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did not really focus on the subject but was rather scattered and unstructured. It was a round table meeting. From the sitting arrangement it appeared that the meeting it was not very traditional types where the administrators and the beneficiaries sit on opposite side of the table. However, the process and participation aspect was very much unstructured. The officers looked arrogant. There were only two women member, one from an NGOs and one from the HMG's Women Development Program. When the NGO leader raised the issue of education for the ex-Kamaiya children from temporary settlements the District Forest Officer (DFO) argued that,

"Such settlements are illegal and temporary so providing services to such settlements would mean we support the activities of encroaching and encourage others to do the same". The DFO seemed to be inflexible arguing that the forest department is very much concerned about protecting the forest. He said, "It is not acceptable that encroachment takes place continuously". On providing educational services for the children of temporary settlements the District Education Officer (DEO) was on the line of DFO supporting his argument. He said to the NGO leader,

"They may run some Non-Formal Education (NFE) classes (short term), but the government can not support a formal setting in such temporary settlements". The other officers were nodding their heads and supporting their colleagues' statement. It seems that they did not want to get too deeply into this issue. The researcher observed that most of the time in the meeting the members and participants were jumping from one issue to another, and not concentrating on the core issue. The discussion also diverted to various other issues, like the local leaders raised the problem of irrigation in Bardiya etc. The representative from MLR, however looked a little disappointed as he seemed to be not happy from the district officers' responses. At the end of the meeting the representative from MLR informed that the government would commission an investigation very soon to investigate who were the real ex-Kamaiyas.

Upon analyzing the representation and participation aspect of the meeting it can be concluded that the process has undermine the principles of Rights Based Approach of effective participation. At the very beginning the researcher noticed that participation of ex-Kamaiyas representatives were very nominal. Only one ex-Kamaiyas representation is merely a ceremonial. This shows majority of the

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members in the committee (almost all except one) did not represent the victims or the claim holders. Moreover, he was not able to bring the issues related to their variation of problems. Considering his low capacity to put his feelings into words he was not provided enough opportunity to formulate his ideas and express them in the meeting. At the end of the meeting even though the MLR representative assured that an investigation commission would be formed to identify the real ex-Kamaiyas, this decision was not participatory. It seems the central government's representative was well set beforehand for this ready made answer.

In the absence of DDC body[7] (local governance that is defunct) the Committee is almost non functioning, as it is chaired by the DDC chairperson. The last meeting was held more than a year ago. This time the reason of organizing the meeting was because a huge number of the left out ex-Kamaiyas had organized sit in protests and were demanding for ex-Kamaiyas status. I have interviewed Ramdas about the issues of the participation and effectiveness of the aforementioned committee and about protecting participatory rights. According to him,

"There is a lack of coordination between the authorities, especially between the forest and the land reform offices, which are very important for us. The forest authorities have in the past destroyed many of our community member's houses and even set fire to the settlements blaming us for being unauthorized settlers". He thinks that participation of more ex-Kamaiyas in such meetings would have made a difference because their united voice would have then become stronger and more realistic. He also raised the issue of local bodies being defunct. It makes a difference if such bodies are not there. The government may claim that they instead have included the party representatives in the meeting, but the party representatives who were present were only from the Gulariya town. They did not represent the villages and settlements. Moreover they were not elected representatives. According to Ramdas,

"The ex-Kamaiyas are scattered in 32 different VDCs and Gulariya municipality and their problems differ from place to place".

[7] In Nepal the parliament and local bodies such as the District Development Committee are defunct since last 2002. It is not clear when elections-local and nationals -can be held. Maoists rebels are waging a war for a republican state. There is uncertaintity on conducting new local elections. It was suppose to held in the beginning of 2003 (five years term).

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He questions the monitoring by the government authorities who never visit the settlements. Without participation of more ex-Kamaiyas and local leaders through a systematic approach, how can the government authorities analyze the situation of the settlements, which are located far apart. He laments the situation that very few of the ex-Kamaiyas have been provided legal land entitlement so far. Many of the ex-Kamaiyas are tired of making visit after visit to the District Land Reform Office without any result.

I noticed that Ramdas was not very open at the meeting perhaps because he was the only representative from the claim holders and because he lacked fluency in Nepali. In the interview the researcher asked him about his feelings on the meeting. He said,

"We are afraid to talk in front of so many people". Notwithstanding, in the interview he speaks openly and with good knowledge of the local situation. Overall, the principles that the beneficiaries must participate in the formulation of government programs has been quite abstract and of limited operational impact. Beneficiaries have not been assigned a role in the decision-making process nor has their technological knowledge been sought prior to designing the project components. In development programs and policies the importance of participation is increasing day-by-day. According to the UN Declaration on the Right to Development, such participation must be "active, free and meaningful". So mere formal or "ceremonial" contacts with beneficiaries are not sufficient. The participation has to be meaningful and active. "Active and informed participation by the poor is not only consistent with, but also demanded by the Rights Based Approach, because the international human rights normative framework affirms the right to take part in the conduct of public affairs" (OHCHR, 2002: 16). The strategy for fulfilling to the rights of the ex-Kamaiyas has to be an effective participation of the group itself in the process.

People's participation in development is concerned with developing people's capacities and skills to negotiate and to seek the resources and changes, which they require in order to improve their lives. Sundar Chaudhary, an ex-Kamaiya leader from the temporary settlements says,

"In meetings people like me are given little importance. I am afraid of speaking in front of *Hakims* (officers) and district leaders. We just hear what they say".

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The beneficiaries have rights to take part in the decision making of their program but the participation of Ramdas in the District Rehabilitation Committee's meeting was ceremonial. The social structural and hierarchical relationship that exists in the Bardiya's society where ex-Kamaiyas still holds a low dignity also plays a role. This also applies to Ramdas and Sundar (two interviewees) who are afraid of speaking because of their lower social status in a given social set-up.

**Participation in Monitoring and Evaluation**

Participation in monitoring and evaluation requires negotiation to reach agreement about what will be monitored or evaluated, how findings will be shared and action taken, so that the beneficiaries can compare the situation before and after a particular program or set of events. A wide range of methods and tools are used for a participatory evaluation.

My field study focused on looking at institutional mechanisms and processes whereby the authorities and the ex-Kamaiyas can facilitate and negotiate between themselves and with other stakeholders to disseminate information and feedback. In this regard I refer to Bales who explains a case from India. He writes, "In Uttar Pradesh (a province) thousands of bonded labourers were freed during the 80s. To monitor and implement the bonded labourers' activities in one part of the program area, community based vigilance committees were formed. Such committees were involved in monitoring and took part actively in the designing of micro activities for rehabilitation. The committee members were involved in decision-making, such as purchasing of rehabilitation materials (like ten sheep and dozens of chickens to each family and so on) for their fellows. Each family was allowed to choose from a number of options those rehabilitation schemes most appropriate to their circumstances such as farming, cottage industry, livestock, even small scale transportation or some combination" (Bales, 2000: 228). In this set-up the participation element from the beneficiaries is strongly reflected. The vigilance committees have representatives from bonded labour leaders and village leaders as committee members. The committee members are local (from the sufferers) and the families are allowed to choose from a number of optional rehabilitation schemes. On this program Bales further writes that, "A study two years later found 95 percent reporting adequate

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earnings to support their families" (Bales, 2000: 229). In Nepal's case the ex-Kamaiyas though are freed but without any knowledge of how to stay that way. They are now being recruited into different exploitative systems. In the ex-Kamaiyas settlements though some groups are formed like saving and credit groups, mothers groups and so on these groups are created only for specific activities by the supporting NGOs. There in not any organized efforts to monitor the government programs by such groups. There participation in decision-making on the programs implemented for them is not found. According to Devilal (an interviewee),

"The groups are formed according to the need of the program for the different activities supported by different NGOs and GO. They do not coordinate among themselves. Every group seems to be accountable to their concern NGOs and limited to the N/GO's activity for which they are formed them. No group is monitoring the revival of the bonded labour system". An enquiry was also made into the litigation related activities to assess the enactment status of the arrangement made in the Act. In one of my focus group discussion (in Janatanagar). I raised the issue of access to justice – whether there had been any litigation related activities to ensure the rights of vulnerable ex-Kamaiyas? None of the participants were aware about the complaint mechanisms. The group informed that in the villages it is the *Badghar,* the traditional Tharu leader, with whom they share their problems. However, on the issues related to the Kamaiya Act, the *Badghar,* Kali Bahadur Chaudhary, (who was present at the focus group discussion) is unaware of the mechanisms. There is no such vigilance group or committee formed at the community level to set up watch and guide rehabilitation and effective implementation of the Kamaiya Labour Prohibition Act.

During interviews with the ex-Kamaiyas 18 out of 20 said that they did not know of any participatory mechanisms to monitor the provisions in the Act such as provisions relating to Kamaiya debts, the composition process of the district level rehabilitation and monitoring committee, about the adjudicating authorities and monitoring the other provision of the Kamaiya Act. Two of the ex-Kamaiyas who had some idea of participation informed to researcher that, they were member in a drinking water users group. The group was formed at the time of installation of a tube well by the supporting NGO. All interviewee said that the staff from the DLR do not

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visit their program areas and do not participate in any village meetings. It is only people from NGOs who come to visit them, but the each NGOs involvement is limited to the activities only that they implement, such as adult literacy classes, some income generation activities etc.

As stated earlier, there exists an ex-Kamaiya Labour Prohibition and Rehabilitation Act, which has a provision for a district level Kamaiya Rehabilitation Committee to look into the implementation and monitoring of the Kamaiya programs. One of the important functions, duties and powers of the district level rehabilitation committee include to monitor whether or not any person is employing any other person as a Kamaiya laborer [Article 9(d) of the Act]. Referring to a similar program in Uttarpradesh (India) on bonded labour Bales says," The almost total lack of judicial back-up meant that some landlords feel free to threaten and coerce laborers back into bondage" (Bales, 2000: 228). The same situation exists in Bardiya. The *Kisan* or landlords have substantial influence in the district government offices and over the authorities. None of the ex-Kamaiyas interviewed (twenty) had ever heard of any landlord being punished. In fact, the ex-Kamaiyas laughed when the researcher asked whether any land owner had ever been punished for keeping Kamaiyas. The above mentioned Committee has not been able to make any impact on the monitoring of the programs and on the revival of the various exploitative systems like *Jirayat*, which is similar to the Kamaiya system. Commenting on the district level leadership structure and implementation of the provision laid down in that Act, Bikhu (one interviewee) says, “We do not know who our representative is”

The above situation reflects that no substantial participatory process has been developed in the implementation of the intentions laid down in the Act. It also reflects a lack of knowledge and awareness of the claim holders (ex-Kamaiyas) and duty holders (state authorities) about the process and ways to use the existing mechanism. Out of the twenty interviewed, only one ex-Kamaiya named Maghu had some idea on the provision of *Jarimana* (punishment) for those who keep Kamaiyas. The study shows that the scattered groups formed by NGO's and GO's programs are focused on the activities supported by them only. There is no committee or group at the community level that has any relationship with the aforementioned district level monitoring committee to monitor the revival of the bonded labour system. No

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landlord has ever been prosecuted for keeping and abusing bonded labourers. The law from the state is ineffective in the absence of any monitoring mechanisms, and the rights provided by the domestic law are continuously being violated. The government has said in the Act that it will respect the rights of the ex-Kamaiyas but in reality many of the provisions have not been enforced.

The problem here is the assumption of the government that the ex-Kamaiya can complain using the provision made in the Act, there is a law they can use to support them, but it does not happen. Discussing with local government employees, the researcher have several times heard the argument that,

"The ex-Kamaiyas have several opportunities to use the law. If they do not use the opportunity it is only their own fault". ex-Kamaiyas though tell a different story- a story of unawareness, bureaucratic injustice and their full time involvement in fulfilling their basic needs for survival. Due to their lack of knowledge and awareness of legal recourse and lack the ability to evoke the law, they do not know where to complain and how to complain and the costs involved are prohibitive, - all this makes it difficult for them to claim their rights. All this shows that the law allows landowners and employers of bonded labour to be charged and punished, but this simply does not happen. The farming patterns thus continue to be exploitative.

**Empowerment and Education in Settlements**

"Participation is empowerment and implies that the people have the right to determine their path of development. To make people empowered they need other human rights, above all the rights to education and to information. An appropriate standard of living with adequate food, housing, health, etc. is another precondition for participation as well as an outcome" (Hamm, 2001:1019).

Starting with Hamm's suggestion that participation is empowerment, I focused my interviewee on the kind of activities and programs existed to empower the ex-Kamaiyas. The findings show that exclusion still keeps the ex-Kamaiyas away from mainstream education. Out of 20 respondents seven are sending their children to primary school and three to secondary school. Two of the above were from permanent settlements and one from the old village. Not all the settlements have schools. In reality children of such settlements are deprived of education as the schools are

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located far away; this is especially related to the temporary settlements. Furthermore, many ex-Kamaiyas are so poor that they prefer to send their children to work rather than to school.

In a group discussion in Bangai the researcher was informed that the ex-Kamaiya children are sent to nearby towns or to the district headquarter (Gulariya) to work as child labour. They earn around NR 4,000-5,000 (US$ 50-65) a year to support their family. Chandra Kali Tharu an ex-Kamaiya woman from the Janatanagar settlement has sent her girl child to a far away town called 'Butwal'. Tough she is not happy with the wage her daughter gets, but she has no option as the family consists of many members and the land provided by the government is not enough to feed all of them. This situation reflects that that the government programs do not address the fundamental concern, i.e. that of education, which is a prerequisite for human rights empowerment. Hamm says that, an appropriate standard of living with adequate food, housing, health etc is another preconditions for participation as well as an outcome. However, the ex-Kamaiyas lack adequate food and health facilities. To meet their expenses the families are compelled to send their children to earn money.

To generate awareness among the marginalized communities (including ex-Kamaiyas) NGOs have operated in-formal adult classes. These classes have to some extent enhanced the vocal capacities of the ex-Kamaiyas and other deprived groups such as Dalits to speak up for their rights. The researcher has noticed this because the female ex-Kamaiyas of informal classes were raising the issue of free primary education for their children. According to them, the primary education is not free in their locality. However in temporary settlements such informal classes and NGO's awareness activities are very limited compared to permanent settlements.

Education is a strong tool to empower the ex-Kamaiyas. Although primary education is declared free in Nepal, the ex-Kamaiyas have to bear the burden of notebooks, dress, exam fee and other annual charges. In the focus group discussions the lack of primary schools in the settlements was ranked as the most severe problem. Similarly the crowded classroom and lack of educational materials were seen as problematic issues. In my interviews 16 out of 20 respondents ranked, "Lack of income and inability to pay for stationery/dresses/fees" were the main cause to participate in the educational activities for their children. The other problem they

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raised was the distance of schools as the newly created settlements were out of the villages (near by forest areas). The field research identifies that the in-formal education classes of short hours for adults are however into some extent successful in making them aware and empowered. However, realizing the rights of participation through empowerment is not adequately taking place as education opportunities for the ex-Kamaiyas are very limited.

## 5.3 Non-Discrimination

The Universal Declaration of Human Rights, as well as all other human rights treaties (e.g. Article 2(2) of the ICESCR and Article 2(1) ICCPR) explicitly emphasizes the principle of non-discrimination. In addition, a number of human rights treaties are exclusively dedicated to non-discrimination as a basic principle of human rights. As I stated in chapter IV (under the proposition of RBA) that the human rights imperative of such approaches means that particular attention is given to non-discrimination, equality, and equity to the vulnerable groups. Although the state has declared the Kamaiyas freed through making the Kamaiya system illegal, land allocation (a main programme) for this landless group has been dealt with differently before and after the declaration of their freedom. My field research has identified the following discriminatory practices.

**Sukumbasis vs. Kamaiyas**

*Sukumbasi* is a terminology used for landless people. In Nepal a large number of poor well as well-off people migrated from hill to Terai (low land) during the 1960s. At the same time the government started massive migration and resettlement schemes thereby bringing even more hill occupants down to the Terai.

In 1976 a Landless People's Problem Solving Commission (in Nepali it is called *Sukumbasi Samasya Samadhan Ayog*/SSSA) was formed to solve the problems of landless people. It was during the party-less system of government (called Panchyat system). The commission's task was to identify landless families and provide them with entitlements to the land (Karki, 2000: 76). Each government gave continuation to this commission even after the introduction of the multiparty democracy system in 1990. Every time when the government changed the Committee

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members of the commission also changed. It has been one of the popular Commissions of every ruling party. The Nepali Congress government in 1992 entitled land ownership to 10,278 Sukumbasi families throughout the country. Similarly in 1994 the UML-lead government entitled land ownership to 58,340 Sukumbasis. Out of the above mentioned number, 6,987 families of Bardiya were entitled to land in 1994 (SSSA, 1995a: 23). In this process of land entitlement the record of the SSSA shows that even some of the Kamaiya families also benefited from this program as they were able to register themselves in the list of SSSA through political connections (stated by one of my interviewees Ramdas).

The few Kamaiyas who benefited from the SSSA, did not do so because of being Kamaiyas but because they managed to put themselves in the category of landless *Sukumbasis*. According to the report of the government's Landless People's Problem Solving Committee/SSSA only 195 Kamaiyas households received 97 bigha 10 katthas of land through SSSA from 1990 till 1995 (SSSA, 1995:a). This shows they received 10 kattha of land per family.

In the past the ex-Kamaiyas were not involved in land encroachment like the *Sukumbasis*. The ex-Kamaiyas were working on the landlords' farms. They were tilling the land belonging to high caste landowners or rich Tharu families. Hand-in-hand with the processes around the land registration by the SSSA went also a social and political marginalization of the Tharu society, as the Nepali caste system perpetuated by the hill migrants, gained ground in the villages of Bardiya. In a focus group discussion, in the Janatanagar settlement the participants inform to the researcher that, Bardiya was a thick, dense forest before. *Sukumbasis* were very active in encroaching the land especially after 1960, when the malaria eradication took place. After democracy was introduced around 1992 a few Kamaiyas from Damauli, a nearby village from Janatanagar settlement, organized and occupied public land when they saw many hill dwellers occupying forest land and becoming *Sukumbasis*. However, the landlords did not like this. The landlords had good connection with the authorities of local government and support from the police. So some of our friends who occupied public land were threatened from the government administration offices. They were not recognized as legitimate *Sukumbasis*. The forest authorities

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burned their temporary huts and they said that we had always been known as Kamaiya and should work in the landlord's land.

Document research shows that occasionally there were some small movements and uprisings for encroaching land taking place among the Kamaiyas in Bardiya. During the study the researcher observed that so far the government of Nepal had not been able to come up with a widely implementable land reform program and plans to resettle the landless Kamaiays as well as other marginalised groups. In the latest arrangement (1997-2002) the quantity of land that the *Sukumbasis* were allocated by the SSSA was a minimum of 10 kattha. I have seen in the field that many landless *Sukumbasis* were even provided with more than 10 kattha. With regard to Kamaiyas being organizing and resisting Devi Lal of Shantinagar, a former Kamaiya, says,

"In Bardiya after 1990 there were some sporadic isolated resistances and uprisings among the Kamaiyas for grabbing land but very localized. The *Sukumbasis* (specially referring to hill migrants) were clever. They gradually managed to gain legal rights to the land they had occupied. They lived in groups, became close to party workers (as potential voters). The party workers supported them for legal entitlement of the encroached land. Some of our friends also managed to register as *Sukumbasi* and were entitled land by the SSSA". Land has been always a pivotal issue as it is connected with survival. Practicing agriculture is the only skill and livelihood of the groups like *Sukumbasis* and Kamaiyas, that they could use for their livelihood. The ex-Kamaiyas were also landless but they were treated differently that the hill migrants. The findings of the group discussions, interviews and reviewing of repots from SSSA verify that *Sukumbasis* were provided with a minimum of 10 katthas and was practiced up till 2002.

Karki says that, "The SSSA has to be dissolved in 2002 after much political chaos, nepotism and controversy on land allocations by the ruling and opposition party workers. The controversy has laid bare basic divisions within the communities" (Karki: 2001: 105). However, the government took a discriminatory approach to the ex-Kamaiyas, who had been suffering a most intense denial and violation of rights compared to the *Sukumbasis*. After months of the declaration in the late 2000 the government made a discriminatory decision to provide the Kamaiyas with a

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maximum of five katthas of land per family. Though ex-Kamaiyas were demanding a minimum of ten kattha of land per family. This is still in their demand. This shows that the level of discrimination against Kamaiyas is not only limited to the rural elite but the state has systematically excluded them from whatever state benefits were generally available. Until 1990 none of the state-led land reform policies and programs considered Kamaiyas as a potential target group (Karki, 2001: 74). The evidence for this is that they were never beneficiaries of the land tenancy rights, landless people's resettlements program and the like.

The strategy of the Rights-Based Approach to development is identifying the marginalized families, women, men, girls and boys suffering from the most intense denial and violation of rights, injustice and distress. It attempts to address not just the effects of poverty, marginalization, injustice, denial and violation of rights, but also their causes. It facilitates and supports poor and marginalized people's own action to address injustice and restore their rights to affirm that it is the fundamental responsibility of the state to ensure justice and rights. Individual and civil society has both the rights and responsibility to define and protect rights.[8] The above discriminatory practices that cause Kamaiyas to become continuous poor did not fulfil the aspiration of Kamaiya freedom. This shows that government program does not comply with the rights based approach because the causes of poverty are addressed in a discriminatory way. The assumption of RBA is that the role of government is to guarantee a kind of social safety net and hence it is the obligation of governments to ensure that this "net of rights" is in place.

**Temporary Vs Permanent Settlements**

As stated previously under the section good governance, there exist two distinct ex-Kamaiya groups. One, which has got ex-Kamaiya status and legal entitlement living in permanent settlement or *Thai Siwir.* The other group still living in temporary settlements or *Aasthai Siwir* striving for ex-Kamaiya status. The land allocation programme is discriminatory among the permanent settlers. They are offered discriminatory land entitlements-ranging from one kattha (0.335 hectare) to

[8] Operationalzing rights approach to development. Action Aid Asia Regional Workshop July 31 –August 4, 2000 Bangkok.

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five kattha (0.17 hectare). They are categorized into four groups. The 'A' group with red identity card holder is the most vulnerable group entitled for maximum benefits such as, a maximum land entitlement of five katthas, NR 10,000 and timber at concession price to construct house and some loans for income generating activities. However, my field study shows that not all the red card holders are provided with the maximum five katthas of land. For instance, the ex-Kamaiyas in Shantinagar settlement (125 households) belonging to the 'A' category Kamaiyas with red cards are entitled only three katthas of land, whereas the same group in Janatanagar settlements have received five katthas of land. This shows that the entitlements are arbitrary and discriminatory.

A larger number of the ex-Kamaiya families left out in government survey (9,200 as stated under section good governance) living in temporary settlements are precariously squatting on the public and forest land and waiting for the government to recognize them as ex-Kamaiyas. They are demanding entitlement of land and other rehabilitation packages. *The Kathmandu Post* writes on this issue: "There are hundreds of left-out Kamaiyas in Kanchanpur district (another Kamaiya affected district) who are yet to possess the special red card of 'freed bonded labourers' which entitles them to government facilities such as their own land, some timber and NR 10,000 to construct their own house (according to the provision made in the government's rehabilitation program). Many left-out Kamaiyas are now staying in makeshift camps in forest areas around the *Ojharkhali* Kamaiya camp, like mute spectators of the privileges enjoyed by some of their brethren" (*The Kathmandu Post*, July 27 2003).

Since the temporary settlements are considered illegal the government is reluctant to run any kind of program in such settlements. Whereas in the permanent settlements there are programs, like food for work, house construction support by some INGOs and informal education classes for adults. Focus group discussion in Bangai (temporary settlement) states that, their children are not going to school, as the primary school is too far from their settlement. With regard to education *The Himalayan Times writes*, "A substantial distress for the ex-Kamaiyas, particularly in the temporary camps, is that their children cannot go to school, as government schools are often hours walk from the settlements. In addition, nothing is provided for them

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where they live. They cannot get any educational support as long as they are living illegally on government land" (*The Himalayan Times,* 25 July 2003).

This shows that the government did not extend the concept of 'Education for All' to this vulnerable group. The educational needs of different groups are not equally realized. From the rights prospective every child should be equally treated in providing education whether he or she lives in a temporary or in permanent settlement. The official argument that, "The temporary settlements are illegal and implementing development programs in such illegal settlements would encourage further encroachment", does not fully apply with respect to the groups like ex-Kamaiyas. The freedom of the Kamaiyas should be accompanied by education as an integral part of government programs. The identity cards should not be the gate pass to get education, as education is a universal right.

In the research areas I noticed that some NGOs have launched programs like outreach and flexible classes for children living in temporary settlements. As the temporary settlements are considered illegal the district administration often gives a hard time to NGOs for running programs. On the same issues Lind Petersen from Kamaiya affected area in Bardiya writes, "It is highly problematic that all those ex-Kamaiyas who are not yet formally acknowledged as former bonded labourers seem to be left in a vacuum where the government does not take responsibility and thus give the NGOs a hard time deciding how to deal with the dilemma of supporting people who reside illegally" (*The Himalayan Times*, 25 July 2003).

The following statistics demonstrate that after the freedom access to primary education of the ex-Kamaiya children is deteriorating. According to a survey carried out by INSEC in 1996, 10% of Kamaiya children attended school. A recent survey in the settlements of Bardiya shows only 3% attend primary schools (EFP report, 2003:4). This is underscored by the striking absence of youngsters and children of school-going age in the settlements. Discrimination in access to education was also investigated in terms of gender. In both focus group discussions it was discovered that parents do not prefer to send the daughters into the primary school compare to sons, as daughters have to take care of household work. The forest authorities consider the temporary settlers as illegal and harass them. In Bangai temporary settlement in a focus group discussion participants stated that,

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"There have been many cases when the forest authorities have set fire to the temporary settlements and put the ex-Kamaiyas into jails for several months in charge of encroaching forest land" The afore said issue has been extensively discussed under the section good governance. Sundar Chaudhary of Lahungawa temporary settlement is unhappy with the approach of government. He says that,

"These two groups are treated differently in many ways. Development organizations (I/NGOs) are also afraid to launch programs in our settlements as our settlement is temporary". The researcher did not observe any substantial development activities in 'Lahungawa' temporary settlement except one tube well for 20 households. As discussed in the previous section under participation the DEO and other government line agencies expressed their reluctance to formulate programs in temporary settlements.

Non-discrimination is a core human right that is protected by customary and international human rights law which is the right to life, freedom from torture, freedom from slavery and so on. As I discussed in chapter IV a human rights approach to development includes non-discrimination and pays special attention to disadvantaged groups like the ex-Kamaiyas and such individuals in a society. The human rights approach for a vulnerable group like the ex-Kamaiyas demands affirmative action in the programs implemented for them. Landlessness will continuously put this group in further deprivation as land is such an integral part of their livelihood. Affirmative action calls for minorities like the ex-Kamaiya to be given special consideration in land entitlement, education and other development programmes.

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# CHAPTER 6
# CONCLUSION AND RECOMMENDATIONS

## 6.1 Conclusion

This thesis argues that the development programs implemented for the ex-Kamaiyas do not comply with the Rights Based Approach to development, although the government's decision to declare them free has positive elements in relation to human rights. It can be said that the achievement of freedom an essential feature in securing human rights has enhanced the ex-Kamaiyas mobility and opportunity to organize for their rights, but in absence of comprehensive rights the freedom acquired by ex-Kamaiyas is in danger. The human rights affirmed international standards comprehensive nature of human rights, which is fulfillment of the civil, political, social, economic and cultural rights to promote justice, equality, participation and accountability. For ex-Kamaiyas realizing these standards has been even more difficult than getting the government to declare their freedom

The findings of the research show that in research area new patterns and systems of exploitation similar to bonded-ness are emerging. One such system identified by this research is known as *Jiraryat* system. Under this system the landowner agrees to lease of his land to an ex-Kamaiya family for one year on the condition that the Kamaiya family will cultivate the land and that the harvest will be shared fifty-fifty. On surface these conditions may look normal. However, there are several additional exploitative measurers which the ex-Kamaiyas have to fulfill while tilling the land under the *Jirayat* system. The research reveals that the ex-Kamaiyas' family members are involved in taking care of the landowners' household work and farming of an additional plot of around five Kattha (0.17 hectare) of the landowner's without any wages. In the *Jirayat* system the harvest from this additional plot cultivated by ex-Kamaiya family belongs solely to the landowner. Furthermore female members of the ex-Kamaiya families' are engaged in taking care of the domestic work of the landowner as maid for low wages, or simply some cloth once a

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year. The additional work done by the ex-Kamaiya and his family is virtually unaccounted.

The field study also reveals that women members of the Kamaiya family are under double pressure. They start their daily life with their own household and farm work. They have to take care of the landowner's domestic chores till late in the evening, where after they return home to cook for the family, take care of the children and so on after finishing the work in landowner's house. The findings shows that for ex-Kamaiyas finding agricultural labour work is difficult due to abundance of labour. They have to accept all the exploitative conditions lay down by the land owners. There are some demands and agitation on rights to minimum wages. However such are very limited and not well organized. The provision of the Kamaiya Labour Prohibition and Rehabilitation Act that ensures their rights to minimum wage is not monitored by the state mechanisms. The governance is not responsively behaving to ensure the implementation of the provisions of the Act that protect the rights to minimum wages.

This researcher has found that some ex-Kamaiyas' have paid back the 'annulled' debt to the land owners and have re-entered into the various exploitative system similar to Kamaiyas. Instead of accepting the government entitled plots they rather choose to stay back in their old arrangements because in some places the plots entitled by the government to the ex-Kamaiyas are far from their existing place of living. In addition, the plots are infertile, flood prone, sandy and with gravels and boulders. They prefer to have their land near to the present place of residing, but the authorities never sought their preferences. So, they rather pay back the annulled debt and decided to continue with the exploitative farming pattern. The other thing that the research reveals is the quantity of land provided by the state is very minimal. They cannot only rely on the government entitled land. If they accept the entitlement they may have to go far away and they are not sure whether in a new place they will have other additional opportunities for agricultural wages work. The above situation reflects that the ex-Kamaiyas right to participate in selecting plots for them is not part of the government programme. Their preferences and interest are neglected while allocating land.

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Their lacks of awareness, ignorance of the safeguard mechanisms in the Kamaiya Prohibition and Rehabilitation Act, complaint mechanisms is other reason for paying back the annulled debt. Similarly poor monitoring of the provisions of the Kamaiya Act by the state authorities is other reasons that makes the landowners to violate continuously the provisions of the Act and compelled ex-Kamaiyas to pay back the 'annulled debt'.

Introducing an act called 'ex-Kamaiya Labour Prohibition and Rehabilitation Act'. Can be considered a positive step of the state. It has a provision to punish the exploiters. But the ex-Kamaiyas are not aware of the legal provision of the Act. The research shows that not a single complaint has been made against any Kamaiya employer. They lack capacity to claim their rights, but this issue is ignored in government program. The development programmes for ex-Kamaiyas have not been able to empower them enough so that they regard their rights as a means of change, as a tool in a process of emancipation and liberation. They are not benefiting themselves with the available law and Act the potential source of their rights. Human rights must help bring changes needed to ensure the dignity and worthy of the groups like ex-Kamaiyas. Human rights approach also emphasizes availability of the information through transparent and effective mechanisms. For ex-Kamaiyas radio is the only available means found in research areas that too has very limited scope as a large numbers of the ex-Kamaiyas do not possess radio sets. Moreover, programs broadcasted in Tharu languages are not many.

The obligation of the government is to monitor the provision of the Act, which is a key requirement of good governance. The implementation approach of the government program lacks effective participatory mechanisms so that through the participation of the claim holders monitoring of the programme can effectively launched. According to a provision made in the Kamaiya Act, there is a committee in each Kamaiya affected district called "Kamaiya rehabilitation and monitoring committee". This committee is to implement and monitor the Kamaiya rehabilitation program. The committee which is based in district headquarter (Gulariya) has 16 members. Out of 16 members only one is from ex-Kamaiya groups. That too is appointed by the DDC chairperson (a political governing body) not recommended or identified by the ex-Kamaiyas. The Majority of the committee members (nine) in the

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aforesaid monitoring committee are ex-officio bureaucrats. Moreover in present context due to the defunct of the elected DDC body in Nepal since last two years such committees headed by district Chairperson are not effectively functioning. It is the Local Development Officer a government bureaucrat who acts as Secretary/ex-officio in such committees and chairs the meeting. The Kamaiya development program lacks any monitoring mechanisms at the community level like a 'community vigilance committee' where these ex-Kamaiyas can redress their rights through a meaningful participatory way of monitoring and implementing programs made for them.

Due to the absence of any such community level organization the victim groups are unable to express their preferences meaningfully and collectively. Individually they are powerless. Collectively, however the strength of their numbers will enable them to develop a countervailing power in demanding redress or in asserting them to develop a countervailing power. But the ex-Kamaiyas' settlements are scattered throughout the district.

Obtaining an identification card is essential for the freed ex-Kamaiyas as it is considered a precondition to be the beneficiaries of government rehabilitation program. To obtain a status of the ex-Kamaiya the government survey required certification by his landowners/employer. Information from the ex-Kamaiyas' interview suggests that such provision has placed landlords/employer in a superior position and created an opportunity for the landowners to use exploitative measures while certifying them as their ex-Kamaiya. The field study shows that a big landless Tharu group is claiming themselves as bonded labourers because according to them they were left out in survey process. According to them the surveyor who came to the villages had collected information mainly from the rural elites and landowners for certification and identification. According to these left out groups the land-owners did not provide the right information. The government initiated a Kamaiya verification on the basis of the data collected in about four years ago. The large group of the unregistered ex-Kamaiyas says they were unaware of all the developments that were going around at that time for their registration. Thus only a small group of ex-Kamaiyas in Bardiya have got legal land entitlement from the government. As the freed Kamaiyas were certified on the recommendation of the landlords, some of the freed Kamaiyas were deliberately deprived of being certified, whereas some non-

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Kamaiyas were able to obtain the ID card (Ban, 2002:15 ). The above situation reflect that due to the lack of proper governance by the Ministries/government working for Kamaiyas development, the freed Kamaiyas development is in a state of disorder. The discriminatory approach has created various groups of Kamaiyas.

So far only a small group has received government entitlement whereas the other big group is waiting for their recognition. Due to the lack of effective monitoring mechanisms by the government in providing developing support to the ex-Kamaiyas, many organizations are implementing program differently in the same area /settlement. There found a discriminatory approach in the development program implemented by the state. Especially the Kamaiyas classified under B, C and D (see page 61 for a description of the card) classes seem as if they are forced to satisfy themselves with the minimal land they are getting (Space Time *dainik*/daily, May 2, 2004). Attention of government and non-government stake holders mainly towards to 'A' group of Kamaiyas and negligence to other group has created disputes among the ex-Kamaiyas.

The group that has no legal recognition of the land is treated differently from the one that has a legal entitlement already. The government is reluctant in providing services to the one living in temporary settlements. The research has found that their right to development such as education and livelihood are ignored arguing (by the government line agencies) that these people have illegally encroached land and are not recognized settlers. Analysis of these facts shows that government takes a discriminatory and arbitrary approach. Research shows that the government has been entitling higher quantity of land to another landless group called 'Sukumbasis' (landless settlers) till 2002. The ex-Kamaiyas are also landless but they are given title to much smaller plots than the Sukumbasis. Such discriminatory approach of the state is incompatible to the Rights Based Approach. The behavior of the leaves one with the impression that on the one hand the state has given particular attention to the ex-Kamaiyas through declaring their freedom, but on the other hand the programs related to ex-Kamaiyas are not addressing the issues related to non-discrimination, equality and equity concept. A non-discrimination approach requires affirmative action in providing economic and political opportunities and access to education and

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basic services. Such Human Rights approach demands the right to just wages and an existence worthy of human dignity.

This study arrives at a conclusion that the government's decision to declare the freedom of the Kamaiyas was strongly influenced by the non-state actors like NGOs, INGOs, Donors and media. The non-state actors had made consolidated and coordinated effort for Kamaiyas liberation movement. They have been actively involved in lobbying and advocacy for ex-Kamaiyas' rights to freedom. However, in the aftermath of declaration the non-state actors discontinued the same consolidated approach for the sustainable development programs for this vulnerable group. The development programs implemented by I/NGOs are scattered and not coordinated. The activities launched at various settlements create discrimination among the ex-Kamaiyas. For instance the ex-Kamaiyas of Bardiya informed the researcher that in one settlement of another neighboring district (Kailali) one INGO called Lutheran World Federation has supported to build houses made of iron rod and cement (concrete), similarly other INGO has supported for Food for Work Program but not in their settlements. The INGOs can argue that they are working in their confined program area according to their program development approaches; however the ex-Kamaiyas take it as discriminatory approach. Moreover, the activities of INGOs are very much focused in the permanent settlements. Their awareness activities do not relate the provision made in the Kamaiya Labour Prohibition Act that can better ensure the rights of ex-Kamaiyas.

The pandemonium of the post-declaration apparently reflects that the government did not seriously realize its consequences. The declaration, as the ex-Kamaiyas feel, could not change their economic condition and access to education of their children. It can be argued that the social status of ex-Kamaiyas has changed as they are freed now, but there remain doubts on the sustainability of the social status as the government programs to entitled land is so meager that it will hardly make a big change in their lives.

The findings of the research also question on the need of government declaration of freedom because domestic legal measures and international commitment of Nepal shows that slavery was already prohibited. There is a clear provision in *Muliki Ain* (Civil Code of Nepal) to punish those for three to ten years

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who enslave or undertake bondage. In addition to that the 1991 constitution (article 20) clearly prohibits the serfdom. Therefore, what exactly required was to empower to the people and establish legal mechanisms to enforce these legal manifestations and monitoring such practices.

In implementing government programs though DLR is the main stakeholder there are other government development line agencies such as DFO, DEO those have equally important role at the district level programme implementation. There is a lack of coordination between these line agencies. This was evidenced in the field research as ex-Kamaiya family residing in temporary settlements are threatened and harassed by the forest authorities. They are treated differently such as the DEO do not feel responsible to provide education facilities to the ex-Kamaiyas' children residing in temporary settlements. Whereas the government has declared them freed and shown commitment to rehabilitate them. State's commitment 'Education for all' has remained only a slogan as the ex-Kamaiyas children still do not have access to education. This is a serious lapse on government responsibility.

A rights based approach centered to Human development is about creating an environment in which people can develop their full potential and lead productive, creative lives in accord with their needs and interests. Development is thus about expanding the choices; people have to lead lives that they value. State authorities lack understanding of the values of rights to development. Although passing an Act for the protection of ex-Kamaiyas' right is in accordance to the right based approach but in absence of any mechanisms to monitor the revival of Kamaiya system the purpose of passing law has been of no use. There is no correlations between the ex-Kamaiyas' poor socio-political and economical conditions and lack of opportunities, on one hand, and the values of human rights on the other hand. The right to development which is a combined of economic social cultural rights and civil and political rights required to take immediate steps for the progressive realization of the rights concerned. A failure to take the necessary steps, or any retrogression, will flag a breach of the State’s duties. Some rights claimed in some jurisdictions may not be justifiable before a court, but all rights must be enforceable. The opportunities to understand the human rights values of participation are not available as there lack awareness among the ex-Kamaiyas on the issue of participation in monitoring and

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implementing the programs made for them. State parties to human rights treatries like Nepal, not only are obliged not to violate human rights but also to contribute to political and socio-economic conditions favorable to respect, protect and fulfill human rights on the national and international level.

## 6.2 Recommendations

1. Creation of a 'vigilance committee' at community level with representation of the ex-Kamaiyas, Tharu traditional leaders and other local leaders is recommended to monitor the forms of exploitative system like *Jirayat* and such others. Such a community based participatory committee should have higher representation from the disadvantaged ex-Kamaiyas. There should be grass roots participation in all aspects of human rights activism, from standard setting and promotion to monitoring and enforcement of the provision in the Kamaiya Act and their development program. Such bodies at the local level should identify the problems of ex-Kamaiyas and disseminate the information for the issues related to the rights of ex-Kamaiyas such as minimum wages. Traditional leaders like the *Badghars,* can also be in the vigilance committees that the researcher is proposing. Such committees could have their say in rehabilitation schemes and the monitoring of any revival or resurgence of the various exploitative systems. A structural link between this committee and district based 'ex-Kamaiya Rehabilitation and Monitoring Committee' should be established to implement the rehabilitation program effectively in the settlements. To affirm the ex-Kamaiyas' rights in an instrumental fashion as a means to secure empowerment, accountability and participation government and non-government program should empower such community groups for activities related to litigation that can work closely with judiciary at district level. So that the victims of human rights violations the ex-Kamaiyas fight back effectively against the causes and processes of victimization.

2. The 'ex-Kamaiya' Rehabilitation and Monitoring Committee' which is in the Act could be an instrumental to ensure the rights but only with the participation of one of their representative and without link with other community groups it cannot achieve the desired goal. Therefore it is recommended to increase the number of

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ex-Kamaiyas representation in the aforesaid district level Monitoring Committee. Notwithstanding, without increasing the existing number of the committee member. It is to reshuffled through reducing the number of authorities representation limiting up-to a maximum of five to six. In doing so the potential stakeholders such as LDO, DLR, DEO, DFO and DDC chair and such other those are directly related to ex-Kamaiyas development programmes. The vacant position than to be replaced by adding the ex-Kamaiyas representation from one to at least four. In doing so the gender perspective is also to be taken care in other words the participation of female ex-Kamaiyas in such forum is also to be ensured. This is to affirm the ex-Kamaiyas rights in an instrumental fashion as a means to secure accountability and participation in decision making for the program implemented by state and non-state actors. The ex-Kamaiyas those represents in the district level Rehabilitation Committee should be recommended from the community based ex-Kamaiyas groups like the researcher is proposing a community based ex-Kamaiyas Vigilance Committee.

3. Kamaiyas in Nepal as bonded agricultural labourers are the product of an unequal land distribution. It is something that cannot be expected at least until some changes take place in the land distribution system whereby the land tillers like ex-Kamaiyas can have access to land through a land reform program and a system based on justice and equality. There is a need of government intervention through introducing land reform programs on a large scale to uproot this fundamental inequality and injustice. This will also help to establish other poor landless groups' rights.

4. The non-state actors should continuously be involved to empower the ex-Kamaiyas on their rights, education and awareness activities. The contents of the awareness are to be developed in a manner so that the ex-Kamaiays are able to understand the cause and effect of bonded labour, poverty, economic rights, accountability, participation, non-discrimination and the provision made for them in Act to ensure their rights and so on. The objectives of community empowerment, relates to the "people element" of development, lead by participation. To capacitate for free active and meaningful participation of ex-Kamaiyas empowerment should be taken as an essential development activities. Development program should ensure the

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inclusion of ex-Kamaiyas from both settlements. It is an accountable government with equality in approach in which individual and groups' rights and possibilities to be heard are protected and established a norm in the political and development process (Sano, 2000:736). The human rights approach helps to establish accountability through establish norms of equality and efficiency. A society's well being depends on ensuring that all its members feel that they have a stake in it and do not feel excluded from the mainstream of society. This requires all groups, but particularly the most vulnerable, have opportunities to improve or maintain their well being.

5. It is important that the both parties, the state and the ex-Kamaiyas have the capacity to understand the rights aspects of participation. To enlarge participation of the claim holders and rights concept it is necessary that the capacity of the State authorities are enhanced through making them aware on the rights based approach to development specially on how to ensure the rights of a vulnerable groups like the ex-Kamaiyas. When stakeholders are informed about their rights, responsibilities, and options, the first important step towards genuine participation takes place. It is beholden on the government to ensure that adequate, appropriate and relevant information is easily accessible and available to people particularly vulnerable groups like the ex-Kamaiyas in order to enable them to access their rights.

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# APPENDIX

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# APPENDIX A

## Guiding Field Questionnaire

Apr. 25, 03

Prepared by: Shiva L. Bhusal

Note:
The following research questions were developed to guide the interviews and focus group discussion. However, these were not the limiting factor to get into the open questions and issues those have emerged in the process of discussion. The researcher experianced that each questions was linked to many different other related issues. Through the open and frank discussion the researcher got oppertunity to uderstand the dynamics of Kamaiya system and an overview of the status of their rights in the changing context of serfdom to freedom.

**Field qusetionnaire are related to the objectives:**

To identify and analyse:

1. Whether government's development programs and policies fulfill their intended purpose to secure the rights of ex-Kamaiya?
2. In what ways are the Gov. approach to the development of ex-Kamaiya, as manifested in its programs and policies, is similar to, or different from a RBA?

**Target audience**

17-20 ex-Kamaiyas/former bonded labourers (adult men & women) for interview and

30-35 ex-Kamaiya/ former bonded labour (adult men & women)- FGD. (in two group)

Location : Bardiya districts of mid western Nepal.

- Bangai and Lahaungawa ex-Kamaiya settlemment (temporarary/unauthorised)
- Jahatanagar (Permanent/authorised settlement)

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- Ex-Kamaiyas from Rajapur and Gularia (living in their old villages).

**A. Participation and Empowerment:**

Voting and Citizenship Rights

1. Did you ever vote?
2. If so, in which election? If not why?
   a) Local b) National c) Others
3. If not, Because:
   a) My name is not in the voter registration, b) I did not like to vote,
   b) I did not know about the election, d) No one informs me about it;
   e) I don't know

In relation to "a" the researcher will identify "why" the name is not registered?

4. Do you know what activities are launched for ex-Kamaiyas rehabilitation?
   a) Land entitlements; b)Skill development; c) Education; d)Others e)I don't know
5. Which one of the above has benefited to you? In addition, why? also related to Accountability.
   a) Land entitlements; b) Skill development; c) Education;
   d) All; e) If any other,
   f) Not benefited with any program; g)I don't know
6. Can you read and write? Yes No
7. If not, do you take part in any literacy/education program? Yes ; No
8. Are you aware with any kind of bonded laborers law or act? Yes ; No
9. If yes, how does it help the Kamaiya system?
   a) It prohibits bonded labor/Kamaiya system in Nepal;
   b) It punishes those who keep bonded labor;
   c) Any other; d) I don't know
10. Are you aware of the complaint mechanisms if your rights are violated?
    Yes; No
11. If yes where to complain?
    a) To the district administration office (a government unit based in district).
    b) To the village development committee's office (a locally elected village municipal body);

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c) To the police station d) to the village leader;

e) any other; f) I don't know.

12. Have you ever consulted while selecting preferences or programs for you by the government authorities? Yes ; No
    - If yes for what kind of activities (open question)
    - If yes who has asked for your participation

    a) District Development body; b)Village Development body;

    c) District Land Reform Office; d)Any others

13. How you have been asked/consulted for participation in dev prog.

    a) Individually asked ; b) Discussed in the group;

    c) Group leader was informed; d) Any other ways; e)don't know

14. Did you consulted before land entitlement for you? (This applies to those who have land entitlement already) Yes No

15. If not who has identified land for you?

    a) Myself; b) Kamaiya leaders;

    c) Political leaders ; d) government; e) don't know

**B. Non-discrimination/Equality**

16. What is the literacy rate among Kamaiya women? Is any discrimination exists between men and women? Yes; No, If yes what kind of discrimination?

    a) on wages rate; b) landownership;

    c) citizenship; sending school to children; others.

    What do you think about the discrimination that you mention why it occurred?

17. Do you own any land/ government entitlement? If yes how much?

18. a) 0-1 katthas; b) 1.1 to 3 katthas ; c) 3.1 to 5 katthas; d) Not at all

    (*Government has declared for an entitlement of maximum five katthas (0.334 hectare) of land).*

19. Who owes the land? a) Husband ; b)Wife; c) Both

20. Have you heard about the SSSA/Commission for landless family? Yes; No

21. Why you did not became Sukumbasi like hill settlers?

22. Do you know what was the minimum entitlement provided by SSSA? Yes, No

23. Have you heard about land reform bill?

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24. Is the land entitlement to ex-Kamaiya is in accordance to the above land reform bill? a) Yes; b) No c) I don't know.
25. Does the woman receive same wages to men? Yes No
26. If you are not entitled the land why it is so?
    a) I am not registered as an ex-Kamaiya;
    b) I do not like the land that I am offered;
    c) I have not seen the land. d)It is not fertile;
    d) Any other reason

**C. Good Governance**

27. What is good governance for ex-Kamaiyas? How do they perceive it?
28. Do you have citizenship card? Yes ; No
29. If not why? because:
    a) I have not realized the necessity of it; b) I do not know where to get it ;
    c) I have applied but I did not get it; d) Any other reason
30. Do you have ex-Kamaiya identity card? a)Yes b) No
31. If not why: Because:
    a) The landlord did not certify me as ex-Kamaiya
    b) Government survey team did not include my name
    c) I have applied but yet to receive it d) any other reason.
    *The researcher will further identify why in relation to "a" and "b" Kamaiya* How do you manage your livelihood?
    a) I have encroached the forest land; b) I worked as wages labor;
    c) I have re-entered into Kamaiya system d) Other ways
32. If you are a wages labor how much wages do you get (in Rupees)?
    a)Less than 65 b)66-85; c) 86-100 d) Above than 100

***Kamaiya***

33. What do you think are you entering into debt bondage/Kamaiya system again?
    a) Yes b) No

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34. If yes why?
    a) Because I have very small quantity of land;
    b) I can not manage to feed my family with the land that I am entitled or encroached;
    c) no land to cultivate;
    d) I do not get other labour work;
    e) I had taken loan; f) Any other
35. If not why?
    a) I have got land entitlement to cultivate
    b) I have encroached the land (so called illegal)
    d) I worked as wages labor;
    e) I have entered into share crop contract with land owner
    f) Any other
36. Are you working for same landowners? a) Yes b) No
37. If yes what is the pattern of agreement/relationship between landowner and the Kamaiyas?
    a) Same as previous (Kamaiya and landowners);
    b) Share cropper c) Daily wages; d) any other

**Education** (in relation to government responsibility/accountability)

38. How many children do you have? Son……..Daughter……. Total ……
39. Do all of them go to school? Yes No
40. If not who does not go? Son or daughter? If son why does not go? If daughter why does not go? They do not go also because
    a) School is very far; b) Expensive for you to bear the cost;
    c) they are working d) any other reason e) Don't know
    Note: In relation to "a" the researcher should identify why the daughters should not attend schools?
41. How many people in the settlements are literate? men; women.

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**Questions guiding for other general issues:**

42. Do the ex-Kamaiya have their organization/groups? Yes No

43. If yes, what it does? Is it affiliated with trade union, political parties?

44. What role it plays in securing their rights?

a) Advocacy b) Give pressure to the government through campaign or rallies

c) Any other d) don't know

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# APPENDIX B

## List of people interviewed

Following three different groups were interviewed.

**Table-B.1 Details of ex-Kamaiyas interviewed from permanent settlements**

| Sn | Names | Sex | Age | Settlements | Remarks |
|---|---|---|---|---|---|
| 1. | Devi Lal Tharu | M | 45 | Santinagar | Settlement leader |
| 2. | Aitabare Chuahdhry | M | 36 | Shantinagar | |
| 3. | Pardesu Chaudhary | M | 47 | Shantinagar | |
| 4. | Rampyari Chudhary | F | 39 | Shaninagar | |
| 5. | Parvati Chudhary | F | 36 | Shantinagar | |
| 6. | Punam Chaudhary | F | 25 | Jainpur Fanta | |
| 7. | Jamuni Chauhary | F | 55 | Jainpur Fanta | |
| 8. | Makahani Tharu | F | 45 | Jantanagar | ex-Kamaiya women's leader |
| 9 | Chandrakala Tharu | F | 39 | Janatanagar. | |
| 10 | RamDas Chaudhary | M | 45 | Jantanagar | Kamaiyas leader represents in district rehabilitaion committee |

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**Table B. 2 Details of ex-Kamaiyas interviewed in temporary settlements**

| SN | Name | Sex | Settlements | Age | Remarks |
|---|---|---|---|---|---|
| 11. | Amashree Tharu | M | Bangai | | An elderly Illiterate man. |
| 12. | Sundar Chaudhary | M | Lohugwawa | 41 | 'Kamashu'* leader |
| 13. | Bintiram Tharu | M | Lohungawa | 29 | Literate |
| 14. | Basanti Chaudhary | F | Bangai | 24 | Can read and write |
| 15 | Bathuni Chaudhary | F | Bangai | 39 | Illetrate |
| 16 | Binti Tharu | F | Lohaungawa | 45 | Illetrate |
| 17. | 13. Govind Prasad Tharu | M | Bangai | 39 | Literate |
| 18. | 10. Jaimati Chaudhary | F | Bangai | Don't know | A women of around 50 |

*Kamashu is a Community based organization of ex-Kamaiyas.

**Table B.3 ex-Kamaiyas interviewed living in their old villages**

| Sn | Name | Sex | Age | Settlements | Details |
|---|---|---|---|---|---|
| 19. | Magu Chaudhary | M | 32 | Rajapur Village | A barefoot journalist employed by a local NGO and high school passed. |
| 20. | Bikhu Chaudhary | M | 31 | Rajapur | Completed primary education and working as a driver in one of the government offices. |

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# APPENDIX C

## List of People involved in focus discussion

**Table C.1 Bangai Temporary settlements:**

Mixed ex-Kamaiya group (Male and Female)

| Name | Sex | Age | |
|---|---|---|---|
| 1.Raj Kumari Chaudhary | F | Don't know | An elderly woman |
| 2. Silutni Chaudhary | F | Don't know | An elderly woman |
| 3. Astini Chaudhary | F | 50 | |
| 4. Phriya Tharu | F | 21 | |
| 5. Sadhu Tharu | M | 60 | |
| 6.Kaluram Chaudhary | M | 59 | |
| 7.Thagni Tharu | F | 40 | |
| 8. Jagat Rana | M | 60 | |
| 9.Jagi Rani Chaudhary | M | Don't know | An elderly woman |
| 10. Ram Charan Tharu | M | 23 | |
| 11. Fattu Tharu | M | 29 | |
| 12. Somprasad | M | 45 | |
| 14. Pradip Chaudhary | M | 20 | |

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**Table C.2 Ex-Kamaiya focus group discussion at Janatanagar permanent settlement**

| Name | Sex | Age | |
|---|---|---|---|
| 1.Thaguni Chaudhary | F | Don't know | An aged woman |
| 2.Saimni Chaudhary | F | 60 | |
| 3. Aatwanio Chaudhary | F | Don't know | A young woman of around 30 |
| 4. Fudhi | F | Don't know | An old woman |
| 5. Bhawani Tharu | F | Don't know | A middle age man |
| 6. Ramkali Chand | F | 29 | |
| 7. Ram Kumari | F | 20 | |
| 8. Bipat Kumari | F | 21 | |
| 9. Basanti Chaudhary | F | 24 | |
| 11. Janaki Chaudhary | F | 27 | |
| 12. Bal Krishna Chaudhary | F | 25 | |
| 13. Chandra kali Chaudhary | F | 25 | |
| 14 Kali Bd. Chaudhary | M | don't know | Leader/Kamaiya |
| 15. Raja ram Tharu | M | 21 | |
| 16. Karna bd. Chaudhary | M | 31 | |
| 17. Rajna Tharu | M | Don't know | An elderly looking man |
| 18. Jagdit Tharu | M | 44 | |
| 19. Phulary Tharu | M | 25 | |

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# APPENDIX D

**Glossary**

| | |
|---|---|
| Aasthai Siwir | Local terminology used for temporary settlements. |
| Badghar | Local Tharu Leader. |
| Bigha | Land measurement. One Bigha =0.67 hectare or 1.7 Acre. |
| Bora | Wage payment in Kind equivalent of 75 kg. of paddy. |
| Bukra | A residence (hut) provided by the landowner to his Kamaiya until and unless he works with the land owner. |
| Bukrahi | Female member of the Kamaiya family working to the landowner with her husband or any male member of the family. |
| Jarimana | Punishment |
| Kattha | A land measurement, approximately 1/30 of a hectare 20 Kattha= One Bigha. |
| Khyala | Community radio program in Tharu language. |
| Maghi | A great festival of the Tharu Community. This is a black day to the Kamaiya because during Maghi buying and selling of Kamaiyas take place. |
| Pahari | People from the hilly parts of the Nepal. |
| Saunki | Loan borrowed by a Kamaiya from his master. |
| Sukumbasi | Landless people (specially hill migrants) |
| Terai | Plain or low land in Southern Part of Nepal. |
| Tharu | An ethnic group of plain land in Nepal. |
| Thai Siwir | Local terminology for permanent settlement. |

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# BIOGRAPHY

| | |
|---|---|
| **NAME** | Mr. Shiva L. Sharma Bhusal |
| **DATE OF BIRTH** | 13 July 1961 |
| **INISTITUTION ATTENDED** | 2002-2004 Mahidol University<br>Master of Arts in Human Rights and Social Development, Thailand.<br>1984-87 Bachelors in Bachelor Administration<br>Tribhuvan University-Kathmandu, Nepal |
| **HOME ADDRESS** | House no. 63, ward no-8, Khadga-bhadra Kali VDC<br>Kathmandu, Nepal. Tel. 97714370509<br>email: shivalbhusal@hotmail.com |

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