

Context, Issue and Position of Land Rights in Nepal

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Historical Context:

A *Newari* folk song that dates back to Nepal Era 869 (1749 A.D.) is about how a landlord, smitten by the beauty of his tenant's wife, forcefully seduced her by threatening to change the tenant if she did not surrender to his wishes. As depicted in the song, there was no security of land holding because landlords could evict tenants any time they wanted (Thapa, Shangkar, 2000). This situation gives a glimpse of the agrarian situation of Nepal. The reason behind was the discriminations prevalent in the society owing to the caste system which reinforced a rigid division of labor, the gradual alienation of the indigenous Mongoloid people from their land by the dominant Hindu migrants and the privatization of large tracts of productive land by the ruling classes (viz. aristocrats, nobles, royal priests, senior army and civil officials). Any alternation to this situation was largely negated because of the domination of these elements over the state machinery, political power and their ability to exclude others (Ghimire, Forest or Farm). Ironically, not much has changed in terms of the situation facing the tenants even in this day and age. On an average, the landlord evicts one tenant or landless farmer every day even today. In Nepal today, the people in and around the power centers (the royal family, major political parties) and the elites and landlords constitute the elements of the aristocracy which holds ultimate control of the state and hence the formal politics of Nepal.

Present Context:

In Nepal, where ownership of natural resources especially land translates to wealth, power, social prestige and security of livelihood, the ethnic minority groups, especially the indigenous and *Dalits* communities, are marginalized. According to HDR 2004, 15% of hill and 44% of Terai *Dalits* are landless, have no access to land and are dependant on the landlords and rich people for their daily subsistence. Similarly, only 2.8% of the *Tharu*, 0.32% of the *Tamang*, 0.76% of the *Rai* and 0.63% of *Magar* communities have control over land measuring more than 10 acres. A large number of people only have a meager size of land to their name. Almost one-third of households have very small holdings, income from which is barely enough to survive for 3 to 6 months. The percentage of the landless is higher in the Terai and hilly areas of some of the districts, where the ethnic minority accounts for the majority of the total population. As the non-farm employment opportunities are limited, the poor people engage themselves as agricultural laborers and/or lease land for livelihood. The adverse employment conditions: low wages, few days' employment throughout the year, and excessive hours of work for day's wage, have perpetuated poverty rather than alleviating it. Also, lack of ownership of land resources and access to it compels rural ethnic minority households to accept unfavorable terms and conditions of employment, including that of bonded/agricultural laborer. Although the political parties asserted their commitment in providing land to the tillers even before democracy was restored in the country, they have not fulfilled their promise yet. And hence "equality" and "non-discrimination" has served only as a slogan on account of which the leaders win the votes of the land rights deprived. The Badal High Commission in 1996 stated that more than 500,000 tillers are unregistered and are deprived from owning lands. The then government had passed an Act, which would only provide the tenancy rights to those who are registered in the government record. The commission report had recommended a provision to provide land to the

tillers after verifying that they had been tilling a particular plot for at least three years. The recommendation was never executed.

Present Issues:

The major issues of the landless movement are as follows:

1. Determine effective land ceiling and implement it on behalf of the tillers.
2. Ensure the tenancy rights ownership of tilling land of 700,000 (seven lakh) tenant farmers based on the local consensus (Sarjmin).
3. Ensure the land to the landless people for secured housing and agriculture farming.
4. Eliminate existing feudal system e.g. *Kamalari*, *Haliya* and rehabilitate them with land.
5. Identify 50,000 hectares land of trust (religious institution) and transfer the management and ownership to the real tillers.
6. The proper use of the remaining 20% of arable fallow land and proper measurement of land and scientific recording system.
7. Implement strong program against the encroachment of public and forestland.
8. Reform land management and measurement offices and orient them to be pro-poor,
9. Formulate new pro-poor land reform policy and effectively implement it on the behalf of poor farmers or tiller.
10. Integrate land reform program for social justice and livelihood security.

Movement for Land Rights

Before the restoration of democracy, many movements had been carried out in the name of land rights. As per one information, a campaign headed by Padam Bahadur Budathoki had taken place in Bhaktapur in 1950, where laborers refused to give the grains to the landlords as payment. This was the first movement of peasants in Nepal. Similarly, during the same year, another land rights movement was carried out in Lumbini against the landlords; against the high rate of interest in Bara; and for the tenancy rights in Jhapa, Kathmandu and Dang. Following the democracy, peasants had expected to get their rights over the tilling land but were denied the very fundamental right of social justice. Neither any program nor policy was introduced on behalf of the tenants and landless farmers. Therefore, the peasants launched and gave continuity to their movement from 1951 to 1958. The peasants carried out the equality movement in Bara, Parsa and Rauthat districts during that period. A lot of issues were raised between the period of 1951 and 1990, like against the exploitation of landlords in Banke. A rebellion in Piskar of Sindhupalchok district and Chintang in Dhankuta district were also directly related land rights.

Rationale of the Land Rights Movement

The major setback to economic development and social justice is unequal distribution of land, which basically means that this is hindering the development process of Nepal. Gradually the tenant and landless farmers are losing their security of livelihood and becoming poorer by the day. Because of the unequal distribution of land, the feudal/slavery system like *Kamalarnis*, *Haliyas* and unpaid laborers has persisted. Child labor, girl trafficking and unemployment is escalating day by day. Because the tillers and landless farmers have not been able to claim their rights to land, they are being deprived from receiving educational, health and other services. Increasing agricultural production, establishing social justice, preventing exploitation, ensuring access of Dalit and poor

communities to developmental activities and reducing conflict are imperative to attain the goals of land rights and ownership. In the present context, the rationales behind land rights are as follows:

1. Land Rights is a Human Right: All human beings should have access to land and other natural resources. Those who manage and protect the land should have control over its use. Tenants are the major contributors to agricultural production and managers of the land. Thus tillers/tenants should be able to claim their land right as a human right.

2. Land Rights is a Key Empowerment Process of Tenant and Landless Farmers: Land ownership gives both the social and economic power to tillers/tenants and landless farmers. Land ownership determines the level of poor farmers' political participation. Only farmers' independent land right can promote their empowered voice in any public decision making processes

3. Land Right Ensures a Sustained Source of Secured Livelihood: Land is the primary and sustained source of livelihood in the rural context. Rural farmers' land right, ownership and control over the use of land can strengthen the base for overall rural population's livelihood system.

4. Land Rights and Gender-Sensitive Land Reform Enhances Productivity: Absence of landlordism and the breach of occupancy ceiling have hindered productivity. A gender-sensitive land reform can keep all these problems in check.

5. National Development: Without the pro-poor land reform, the agricultural production cannot be increased. Without increased agricultural production, the agriculture sector can not make significant contribution in augmenting the national income. Since not much attention has been given to the pro-poor land reform, the contribution of agricultural sector has been decreasing every year.

6. Social Inclusion: Those who have no access to land and are deprived from the land rights are also robbed of their entitlement to the development activities like loan from the banks, access to telephone, electricity, water, benefits from different cash crops like vegetable, pig raising, poultry farming etc.

Actions To Be Taken:

1. The landlord oriented Land Act 1964 should be dismissed and a new Act has to be formulated patronizing the tenancy rights of the tillers, lands have to be redistributed as per the social justice perspective and a new progressive and pro-poor policy has to be formulated with special contemplations on making lands more productive.
2. The present Constitution is the major impeding factor in realizing a tillers-oriented land reform. Therefore, it should be rewritten and lands should be acknowledged as a natural resource rather than an individual property and should be under the ownership of the community people.
3. The loan of *Haliya* should be absolved and the *Haliya* system should be abolished. The *Haliyas* should be provided with lands as per the tilling proof and should be ensured housing and other facilities.
4. The registration of *Kamaiyas* should be recorded with the viewpoint of social justice and they have to be provided with arable land as per their need.
5. The trust land's ownership should be transferred to the tillers as per the tilling proof with the standpoint of social justice and livelihood security.
6. As per the local Sarjmin (consensus) of local people, unregistered tenant farmers should be ensured their rights over tilling land.
7. The exploitation related to feudal system should be eliminated like *Haliya*, *Haruwa*, *Charuwa*, *Balighare*.

8. A system should be developed where the concept of “One person, one land” is promoted and a certificate verifying one’s ownership should be issued to landowners across the country. Certificates on joint-ownership of land should also be issued in consideration of gender perspective.
9. The *Ukhada* land tillers should get their rights.
10. The issue of citizenship should be solved and the landless and tenant farmers should be able to get their citizenship without having to face any hassles.
11. The collective farming system of the indigenous people should be promoted and their rights should be ensured.
12. The ownership of lands by multinational companies should be barred and there should be a provision where the government is required to get an approval from more than 80% of the people even if the land is being allocated to them for whatever reasons.

Present Movement

The slogan of “provide land to the tillers” that activists have been chanting to the past 50 years has fallen on deaf ears and has still not been able to guarantee the rights of tenant farmers. As the real tillers have still not been able to claim their rights over the lands, various social and political movements are being carried out to ensure their rights in Nepal. Unless these movements are mainstreamed, eliminating exploitation, alleviating poverty and stamping out social injustice will be an unrealized dream.

There is a need of a strong organization of deprived people and powerful intervention from the civil society organizations for actual land reforms. Although the government and non-governmental organizations have prioritized land reforms in poverty alleviation, it is still to be materialized. So, CSRC and its alliance members have been carrying out the land rights movement in more than 25 out of the 75 districts of the country. For this, more than 30 organizations have been facilitating the movement in their respective districts and areas and linking in policy dialogue as well. In November 1950, the revolutionary government declared the end of the *Batiya* (crop sharing) and the *Hunda* (grain payment on contractual basis) systems and distributed all such lands to the cultivators in western Nepal. This must be regarded as a revolutionary step in the agrarian history of Nepal. But unfortunately the democratic government formed after tri-partite agreement signed in New Delhi ordered all of such land to be returned to the landlords (Thapa, Shangkar). This shows that the democracy was not inclusive and advantageous to the tenants and landless farmers. Moreover, if the movement had ended in agreement with the then existent power, it would not have been beneficial for the deprived people.

As Lenin said, land reform alone does not free the tillers. The question is, who does it and how. In the context of Nepal, the tillers themselves have tried to build people's organization and formulate a progressive land reform policy.

Challenges

Autocracy: In the context of Nepal, the power game is in favor of the rich and powerful landlords. For example, the landlords and moneylenders constitute the royal secretariat, the centre point of all decision-makings.

Globalization: Because of the money inflection, the farmers have been disadvantaged and are getting poorer every day. Since the investment in agriculture has shrunk, the agriculture sector has been

shadowed. This is the main cause of poverty and exploitation. Since the subsidy of agriculture has been reduced, the tenant and tillers have been alienated from agriculture.

Role of Different Institutions and Organizations for the Land Rights

Deprived People:

- Context analysis and identification of land rights issues.
- Set up their own organization and formulate the action-oriented points for the movement.
- Debate, discuss and prepare position on land rights issues.
- Develop leadership to facilitate the land rights movement.
- Pressurize the government to formulate a pro-poor land reform policy.
- Formulate a draft of land reform policy, discuss it with different people and submit it to the government, political parties.

Civil Society Organizations:

- Internalize the land rights issue as a prerequisite of whole development of Nepal.
- Make the land reform issue an issue of social justice and poverty alleviation and lobby for this as well.
- Organize and facilitate mass meetings in every village and district and national level to formulate a pro-poor land reform policy.
- Develop committed local activists and human resources to facilitate the land rights movement across the country.
- Carry out researches and formulate pro-poor land policies and provide important feedback to government and political parties.
- Integrate the land reform issue in their respective programs.

Political Parties:

- Organize tillers and discuss on the land rights issues and position.
- Organize debates and discussions from local level to national level on land rights.
- Formulate and implement pro-poor land policies.
- Pressurize the government to implement policies on behalf of the tillers.

Conclusion:

In Nepal, ownership of land is synonymous to possessing assets. The future of agricultural laborers and farmers depend on developing a feasible solution to the problem of landlessness. Access to land resources through ownership transfer, including redistribution of natural resources, is important to enable poor households to take their stand for fair labor relationship and ensure their security of livelihood. Poverty alleviation is only possible when the existing inequalities and injustices are overcome through redistribution of natural resources, especially land. Thus, our role inevitably is to break the current unjust socio-economic structure of the country by establishing the democratic and pro-poor government and civil society organizations. This also safeguards the rights to education, property and development of the deprived community. So, this issue should be given highest priority by the political parties and civil society organizations and included in the existing movement for democracy.

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