

The fight for land reform and tenure rights of poor people in Nepal

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I. Introduction

The inappropriate accumulation of productive resources especially land is the basis of perpetuating the level of injustice and practice of feudal customs in Nepalese society. This is deep rooted and institutionalized in every level – society to political and economic to bureaucracy. This structure always remains active for the benefit to the limited elites with the cost of denials and deprivation of millions of tenant tillers. This has created situation that who produce plenty of grains remain suffer from starvation, malnutrition, and no security of tenure. They always remain poor and disadvantaged. The main reason for this is not having ownership of the tiller over the land.

II. Land and Poverty

Nepal has prioritised poverty reduction in the ninth (1997-2002) and tenth five-year (2002-2007) plans. The latest figure shows that about 38 % of the people are living under the condition of absolute poverty. Their income is not sufficient to meet even the basic necessities of life. The government's main aim is to increase economic growth with the assumption that the wealth generated through this will trickle down to the poor, including the landless people.

Most of the poor are also landless. Access to land is essential for the food security of the family in a situation where state has not been able to provide food security to people. Land is also essential for generating self-employment. Relying on the market alone for employment generation in countries like Nepal is not viable as markets are imperfect, and, due to various reasons, there are fluctuations in creation of employment opportunities. The economic recession is particularly difficult for the poor and landless people.

Therefore, in a country where employment is not guaranteed and where state social security does not exist at all, access to land is important for the livelihood security of the landless and poor households. Addressing the issue of landlessness is more important as this is disproportionately borne by the marginalized Dalit communities. Among the absolutely landless, 22 % are Dalits although they are only 13 % in the national population.

III. Land Distribution and Social Exclusion

According to the National Planning Commission (1998), over 70% of peasants own less than one hectare of arable land in Nepal. Likewise, Human Development Report 1998 mentions that the bottom 40% of the population own only 9% of the arable land whereas the top 6% own around 33%.

According to census 2001, 25% of the households (1,037,785 HH out of 4,253,220 HH) own no land or less than two ropanies of land. They are considered as agricultural landless. The prevalence of landlessness is higher in Terai districts than in the hill ones.

A large section of the farming population is also denied the basic tenancy rights. A government formed high Commission for Land Reform in 1995 states that even after four decades of promulgation of land act 2021, more than 450,000 tenants households are not registered. Even the registered ones have not been able to avail of their rights as tenants. In 2000/01, the Department of Land Reform and Management conducted a sample survey in 35 districts (2000/01) which revealed that there are 2,66,261 registered tenants as eligible claimant of tenancy rights but they have not been able to do so yet. It is estimated that around 1 million poor household (majority of them are Dalits) have been deprived from their legitimate rights over land resources. Most of them are Dalits, ethnic communities and other peasants who fall below the poverty line.

IV. Denials of Human Rights and Justice

The Constitution of the Kingdom of Nepal 1990 part 4, Article 25.2 describes the Directive Principle of the State. This article states that "The fundamental economic objective of the State shall be to transform the national economy into an independent and self-reliance system by preventing the available resources and means of the country from being concentrated within a limited section of society, by making arrangements for the equitable distribution of such provisions as will prevent economic exploitation of any class or individual, and by giving preferential treatment and encouragement to national enterprises, both private and public". Similarly, the Article 26.1 articulates that " the State shall pursue a policy of raising the standard of living of the general public through equitably distributing investment of economic resources..... ".

There is a clear incongruence between the directive principles of the state and the existing inequality in land distribution. This is against the spirit of welfare state. It is also a violation of rights of the people to have access to and control over those productive national resources for securing livelihood and asserting other forms of rights gradually. Moreover, people cannot get citizenship certificate and access basic services, such as water, electricity, bank loans, school admission, birth registration, etc. without having evidence of land ownership. This has created frustration among poor people, as they have not been able to feel that there is government in the country. This type of exclusion badly affects the peaceful environment in the country.

V. Cause for Migration and Conflict

The political conflict has been escalating in Nepal over last nine years. The major reason behind fuelling the conflict are denial of the rights of the people by the state, lack of opportunity to secure their tenure and livelihood, and unjust distribution of national resources especially means of production – largely land. State has not been able to maintain its presence and deliver basic services to the people in one hand and poor and marginalized people do not have land resources to secure their livelihood. This has made their lives vulnerable. This situation has been capitalised by the insurgents for motivating these people in their mission of battle with the state. Going through the statistics, Dalits, ethnic communities and poor people have accounted the large number of militant of the insurgent group.

Another aspect of promoting conflict and accumulating frustration is migration. The people who have not base in living in the villages have now moved to the cities and lived in insecure and unhygienic places. Landlessness and near-landlessness is the main reason behind the internal migration in the country. The landless or near landless people in the hills moved down to either Terai or urban centres in search of alternative job. Those who cannot migrate have to live under very exploitative relationships with the local landlords. This has put them further down the poverty line. All these factors and circumstances have contributed for escalating further conflict at the moment and it is further very likely to come up such conflict in other form besides Maoist insurgency if this land issue is not settled on time or the poor people not given the rights of securing their tenure and livelihood.

VI. Historical context

If we see the history, the Nepali society constituted from Pastoral to subsistence agriculture. Although there was backwardness, people had not faced any economic poverty and social injustice. State started privatization of land to the individuals for collecting revenues once different regime in pre-democracy era before 1950. This had created class and landlordism in Nepal.

During the regime of late king Prithi Narayan Shah, it was regarded the land tax as important source of revenue for the country. Land management system was introduced to generate more revenue form the land systematically. So, the people who were around the power took responsibility of managing land and paying revenue to the state. The Royal Family gave the land as a *Birta* (free object) those who prefer them or those who were in relation with royal family. The government officials or staff got the land instead of salary in government job. The land that used to be controlled by ethnic community also distributed to the ruling class. This has created absent landlordism and alienated the peasant class. This has created the economic impoverishment and poverty. Slowly, it was widening the poverty and conflict. This is the clear historical how the state mechanism and social structure marginalized the large section of poor communities from being benefited from available natural resources.

Land holding is not purely a choice of general people rather consequence of social structure. If we analyze the pattern of landholding in Nepal, it is apparent that so called upper caste in terms of race, male in terms of gender and poor in terms of class holds major portion of land. *Dalits*, women, and poor farmers have been deprived from the access of land and its ownership. The social power structure and state mechanism is responsible for widening the gap between poor and rich due to unjust attitude and inequitable distribution of natural resources especially land. For example, there were less than 0.5 million landless households in 1991, where as the number has reached to over 1 million in 2001. According to a report, there are about 450,000 unregistered tenants who are tilling the landlord's land but the government is not serious about their rights. No one by choice would like to remain landless or live in the state of poverty but it is their poor, this is their oblige. This obligation is created by the historical social structure, which is continuous till date. The state is giving space to perpetuate this unjust social and political system, which is created conflict situation in Nepal.

VII. Government initiatives

To address the peasant farmers' rights over land, government brought land act 1964 which had provision for the tenancy rights and implementation of land ceiling but it was remained paper it could not work on behalf of tenant farmers. Similarly, the government brought other amendment in 1964's land act but there were also remained in papers. The fourth amendment 1996 prohibited taking the tenancy rights by the tillers as a result, now more than 560000 tillers deprived to file the cases.

VIII. Civil society initiative

Community Self-Reliance Centre (CSRC) is a non-governmental social development organization working with disadvantaged tenant farmers over a decade. CSRC positions itself in favor of poor tenant farmers and struggling with the tenant farmers in the mission of asserting their legitimate rights over tilling land as per prevailing laws of the land.

CSRC would spend its energy and resources at policy advocacy and community empowerment level. It believes that CSRC could facilitate the bridging process between state and right holders. CSRC works with state mechanism and engage in policy analysis, advocacy, and lobbying. Similarly, it work with government, assists them discharging their duties, and is responsiveness towards **landless, Freed Kamaiya, Haliya and Tenant** farmers.

Initiation of the movement

In 1994, CSRC conducted baseline study with the support of the ActionAid Nepal. This revealed that the major problem of land rights. The tenant farmer refused the irrigation canal programme and they shared their exploitation by the landlord. The legal camp of Kiul village of Sindhupalchok district made tenant farmers aware regarding their tenancy rights. Unfortunately, even 5% of the total farmers lacked proof to fight for their rights. They paid their stipulated rent but never received rent payment receipts. Minimum proof or rent payment receipt is compulsion to confess the right on the land.

In this regard, tenant committee, farmers, and organization conducted regular discussions and interactions. In the early days, discussions were held on rent receipt campaign. When this process took momentum, tenants got many threaten from landlords to the extent of seizing the tilling land.

The discussions of filing cases, to claim genuine rights over tiling land as per prevailing land Act, started only after a year of receiving rent payment receipts from Sindhupalchok district. Tenants collected other possible proofs of tillage. The proof was supposed to be endorsed by the Village Development Committee – VDC (the lowest unit of government body) but VDC was reluctant to do so. The reason behind this was that the VDC chairperson himself was a landowner and took side of landowners. Hence, 47 tenants encircled the local government officials in the district headquarters asking them to give recommendation of the evidence of tillage to the district land revenue office. This really worked and VDC officials began to

endorse the proof. Then, tenants began to file in the case in district land revenue office in district headquarters in 1996. This was beginning of history of land rights movement in Nepal with the support of civil society organization.

Process of campaign

CSRC has accumulated the information of land situation of Nepal. CSRC has conducted several research and studies on land possession from the perspective of poverty, social exclusion, and social justice and right to tenure etc. knowledge of land rights issues and problems across the country. This has given an opportunity to CSRC to understand and collected wide range of issues and problems associated with land. Based on this context, CSRC has been carrying out orientation programme in each districts and sharing its experiences and learning to the interested individuals and civil society organizations in order to bring them into the part of larger land rights movement.

CSRC is a resource organization and limits its role as facilitator and enabler. CSRC firmly believe that those whose rights are abused, they have to sought and come forward to claim it. In this context, CSRC goes to the villages with the information, principles, and strong action commitments. CSRC local cadre organizes people and facilitate discussion. Once people are convinced with this context and see the relevance of this matter on their lives, they come to the part of the movement. So far, CSRC has reached to over 20 districts (out of 75 districts in the country) and organized thousands of tillers and peasants into the movement.

Besides, CSRC also work with government. CSRC strives to become a reliable partner of government to disseminate their polices and support them to carryout their duties by providing current information through research and studies, by bringing pertinent issues in front of them, by collecting sentiment, by advising appropriate framework and aspiration of people. In fact, CSRC wants to play a role of bridge between the government and the tenant/peasants.

Results of continuous efforts

"If we did not get the land rights over the tilling land, we would also have gone to the jungle and hold guns." This is the remark made by a tenant farmer, who got land entitlement couple of years back in Sindhupalchok district of Nepal. This indicates the relationship between the land and conflict.

"If CSRC would not have started the land rights movement, some of the youths would have gone in insurgent camp" says a social activist in Dang district of Nepal.

The land rights movement has expanded in more than 25 districts with the initiatives of the people. During this period, more than 100 local activists have been developed from the deprived community. They have been providing support to the campaign at local level with incredible commitment. The community people themselves have developed action plan for filing more cases and launch campaigns at local level. Around 200 groups have been formed as primary group of tenant and landless farmers.

By end of September 2004, around 7000 tenant and landless farmers got the land rights in the tilling land and around 63000 landless people have registered their applications at the District Land Reform Office and District Land Revenue Offices and commission offices of the Land Registration of landless. Moreover, tillers are preparing more cases to be filed in near future. This has created good amount of pressure to the government to think about this matter. The district level government agencies have also taken this initiative positively and extended their commitment to provide their end support to this campaign. The inclusion of Dalit, ethnic community is encouraging.

In order to manage the campaign systematically and effectively, a permanent National Concern Group had been formed in early 2004, which has further strengthened during this period. Similarly, an advisory committee has been formed with the participation of renowned professionals and senior political leaders, who would provide inputs to the campaign team and also influence the concerned political parties to institutionalize this issue within their party policy and initiatives.

Current status and importance of land for poor tenant farmers

There are few land issues being a matter of national concern and are under debate and discussions at various level. Some of them are – the current land Act does not stand in favor of landless and tenant farmers. Similarly, the political situation of the country is very fragile at the moment. Thus, neither government nor the political parties have seriously given their attention on this matter rather roaming around with power struggle between the Maoists, political parties, and the King.

Agriculture is the main occupation of 79% people in Nepal. They have no other skills and options besides agriculture. They are the ones who plough the land in real sense but it is pity to note that they remain hungry and suffer from starvation and malnutrition. They are deprived from livelihood resources and excluded from productive resources (see chapter III above). Because of not having land, these poor people have been deprived from other basic services delivered by the state. For instance, people cannot get citizenship without land ownership certificate, people cannot have electricity and water connection with out land, people cannot register their name in voter list, people cannot borrow even small amount of loans from nearby banks etc. Thus, land has been the prime basis of enabling poor people to exercise his/her economic, social, cultural, civil, and political rights. Besides, the landless people are severely exploited, misbehaved and their dignity is seriously disrespected. This leads these poor people towards frustration and humiliation. So, it is obvious to all about the importance of land for poor tenants in Nepal.

Alternatives

- According to the records maintained at Ministry of land reform and Management, there were 375000 registered tenant families in 1996. Similarly, Department of land reform and Management conducted a sample survey in 35 districts in 2001 reveals that there are 288261 registered tenant families. Further, some other reports reveal that there are tentatively 560000 non-registered tenant families throughout the country and most of them come from Dalit communities and poor families. All these families could have access on land according to present

law of the country. The only thing is government need to be serious and committed towards asserting the rights of these people. If government provides land rights based on the tilling proof of three years, around 60% landless people get the land from this.

- It is important to increase the production and productivity of land. Thus, instead of fragmenting land into several pieces, it should be given the choice to the tenant if he/she would like to buy remaining 50% of land from the landowner (if the landowner agrees on it).
- State could bring policy to reduce the limit of land ceiling, which brings large amount of land that can go to the possession of landless people. This land should be given to the landless people on the basis of concessional price. This will help to get around 20% landless people.
- It is estimated that around 20% arable land is fallow. This fallow land could bring into in use. If the landowners are unable to cultivate such land, it could be given to the peasants who have skills and capacity to cultivate it.
- There still exist huge public land in the country especially in Terai. People have been occupying those public land without legal evidence for decades. They are still known as landless. It would be prudent if government bring policy framework to register occupied public lands on the name of the same farmer. This could substantially help government to reduce the no of landless people and increase production and productivity.
- It is estimated that a significant areas of land have left out fallow because of current conflict in the country. The landlords could not have stayed in village. Basically, the government represents to the elite class; These land could give in lease to the landless farmers in appropriate cost.

If government and civil society initiate above-mentioned alternatives, that will mitigate the present conflict. However, in order to ensure social justice and look forward for permanent peace, progressive land reforms is necessary and bring initiative to increase production and productivity.

IX. Role of Government

State needs to realize the structural causes as serious bottlenecks to development. It also has to demonstrate its commitment for bringing structural changes in favour of the poor. Fundamental for this is ensuring poor and landless farmers access to and control over land. The policy should aim at distributing land to the landless, implementing the land ceilings, registering the land of the landless settlers in their name and ensuring tenancy rights to the present tenant-cultivators. All this can directly bring one million families out of the poverty.

The government has to simplify procedures so that it becomes easier for the unregistered tenants to claim their legal rights as tenants. This could go a long way in benefiting over 700,000 tenant families without any additional burden to the state. It is true that Government alone cannot shoulder this mission. Civil society organizations could be the best and reliable partners to the government in implementing the policies towards achieving those goals.

The present government has carrying out groundwork for establishing a land bank as a pilot initiative with the cost of Rs 2 billion during three years period. The collected land is planned to be sold to 25,000 landless people through soft loans to

be recovered in 15 years in small instalments. But this strategy cannot alter the situation significantly as 25,000 is a very small number. Poor farmers do not have patience to wait for that long period. The government instead have to focus on ensuring rights of hundreds of thousands of tenant-cultivators and landless settlers.

X. Role of Donor Communities

The donor communities have been supporting Nepal's development initiatives over five decades. Despite that, the situation of poverty has remained almost the same. They have not been able to address the structural causes of poverty.

Donors need to assist state and the people to change the unjust social structure and inequitable distribution of productive resources including land. Entitlement to land can go a long way in empowering the excluded, marginalised, powerless and voiceless people. As large number of poor farmer's livelihood depends upon land resources, this could go a long way in improving the overall living situation of the millions of tenants and landless peasants. So, Danish government and NGOs integrate the land rights issues in the running project and influence other donor communities to work on the land rights issue and mitigate the social injustice and conflict.

XI. Conclusion

In Nepal, entitlement to land is the first step towards strengthening rights to education, property, and development of deprived community. This issue should come into the national development policy with high priority and should be of prime concern for wider discussion at state, donors and civil society level. The Nepal Development Forum Meeting must deliberate on this and the interest of tenant, landless and poor farmers with high priority.

The tenants have been cultivating land for generations but never had any proofs. The hard working tenants had no information of land registration and could not register within stipulated time. The survey teams also manipulated the survey benefiting the landlords due to which tenants were deprived of their rights. This clearly depicts the legal knowledge of the farmers. Due to lack of legal proofs, tenants are losing their rights.

One of the main sources of conflict in the country is related to land. For example, in a study, which analysed 30 thousand court cases, more than 70% are related to land. Moreover, fighting cases in the court is beyond the means of the poor peasants, and the cases are settled in favour of the rich peasants in most of the case.

Equitable distribution of available natural resources is one of the major areas of intervention for poverty alleviation. This objective could be achieved through collaborative action between tenants farmers, civil society, and the Government. State need to realize that the poor tenants and landless people have become aware of the violation of their rights. The Government and donor agencies need to think about this issue seriously and take positive initiatives immediately to avoid any unwanted circumstances.

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