

Status of Land Tenure Security in Nepal

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KEYWORDS

Land, Land Tenure System, Land Tenure Security, SWOT analysis

ABSTRACT

Land is a fundamental natural resource for living, an economic asset for production, legal entity with multiple rights over it and above all, a societal factor for self-actualization. So, ownership of land has multi-faceted understanding around the world. For the developing country like Nepal having diverse societal arrangements, land tenure system plays important role in economic, social and political structure. As Nepal is in the process of implementing federalization, assessment of land tenure security shall be one of the instruments for developing new land related policies and assessing the effect of new policies afterward. The objective of this paper is to perform SWOT analysis on the status of land tenure security in Nepal by reviewing the history of the tenure system and current tenure system, studying country reports and research papers and analyzing policies and institutions. The study shows that despite some initiatives by government, NGOs, bilateral agencies and media to improve land tenure security, land tenure insecurity prevails in all areas of the country even in registered lands. It is found that stable organization, registration of most of the built-up and cultivated land, advocacy to protect the right of landless has strengthened the land tenure security. However, the tenure rights of socially and economically disadvantaged people and displaced people from disasters have not been properly addressed and those people are at high risk of eviction from the place they are living. The study recommends that land tenure insecurity arising from political, legislative and organizational behavior should be managed by appropriate interventions and policy reforms. As most of the analyses of land tenure security in Nepal have been performed in a descriptive way, this study explicitly investigates the issue through SWOT analysis.

1. INTRODUCTION

1.1 Country Introduction

Nepal is a landlocked country in south Asia situated in between two giant economies; China and India. Nepal covers an area of 147,181 sq km possessing diverse topography ranging from 65 m from sea level to the highest peak of the World 8,848-meter-high Mount Everest. With a population of 28.51 million, it is the 45th largest country in the world by population (GoN & UNDP 2014). Nepal is a developing country with per capita income of \$ 712 per year ranking 145th position in the world by Human Development Index (WB 2015). As of 2015, it has GDP of \$21.19 billion with GDP growth rate 2.7% and inflation rate 7.9% (ibid). Enactment of the new constitution on September 20, 2015, replacing the interim constitution of 2007, Nepal has been restructured into the federal democratic republic of Nepal.

1.2 Land Use, Land Ownership and Land Tenure System

Out of total area of Nepal, 28.7 % is agricultural land, 25.4 % is covered by forest and 18.6 % is urban area (FAO 2010). Agriculture is the largest employment sector for over three-quarters of the populations but generating just one-third of GDP (ibid.). Nepal is one of the least urbanized countries in South Asia but one of the fastest urbanizing with a national urbanization rate of 2%. Due to the high rate of urbanization, Nepal is facing the great challenge of managing shelter and housing for increasing population in urban centers.

In Nepal, the average size of agricultural land per household is decreasing from 0.8 ha in 2001 to 0.6 ha in 2008 (FAO 2010). According to National Planning Commission of Nepal 1998, over 70% of farmers own less than one hectare of arable land (GoN & UNDP 2014). The number of landless is more than 1.5 million and the problem of informal settlement is increasing (FAO 2010). In 2008, total number of surveyed land parcels was around 25 million and the number has been increasing in high rate due to haphazard and uncontrolled fragmentation of

land plots (Acharya 2008).

The land tenure system in Nepal has a long history and is based upon Hindu culture (Acharya 2008). Major change in land tenure system happened after 1950 when autocratic *Rana* regime ended and democracy was declared. Government land, public lands, Private (*Raikar*) lands, Trust (*Guthi*) lands and Informal land are the current land tenure types in Nepal. Informal land tenure is increasing due to increase in the occupancy of government land, public land, forest areas and private barren land by landless, bonded labors, conflict victims and disaster victims (CSRC et al. 2009)

2. LITERATURE REVIEW

Land is a fundamental natural resource for living, an economic asset for production, legal entity with multiple rights over it and above all a societal factor for self-actualization. So, ownership of land has multi-faceted understanding around the world. Accordingly, land tenure is multidimensional and complex issue constituting of overriding, overlapping and complementary interests between man and land (FAO 2002). UNHABITAT (2008) defines land tenure as “The way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land. In other words, tenure reflects the relationship between people and the land directly, and between individuals and group of people in their dealings in land”. Land tenure defines the mode of holding over land and the set of relationship between people and land.

Meanwhile, land tenure security is the level of confidence held by people against the eviction of the rights enjoyed to land. For the same type of land tenure system, perception of tenure security can be different in different country, society of the country and among people living in the society. UNHABITAT (2008) defines land tenure security as

- “The degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefit that flows from it

- The certainty that an individual's rights to land will be recognized by others and protected in case of specific challenges or
- The right of all individuals and group to effective government protection against forced eviction.”

For the developing countries like Nepal having diverse societal arrangements, security of land tenure plays important role in economic, social and political structure. “Tenure system, in particular, tenure security reflect a lot about the nature society, the development and performance of its informal and formal situations and the way of dealing with change under globalization and factor market liberalization“ (UNHABITAT 2014). Proper governance of land tenure through strong tenure security is the crucial factor for sustainable use of the environment and ultimately for the eradication of hunger and poverty (Munro-Faure & Palmer 2012).

Since security of tenure is the perception of individual people, it can't be measured directly and to a large extent (FAO 2002). Provision of freehold tenure right can be one of the criteria to measure tenure security as it provides stronger tenure security to landowners and thereby stimulating investment and efficient use of land (Holden & Ghebru 2016). In addition to formal titles, security can be achieved through long-term rental contracts or formal recognition of customary rights and informal settlements (UNHABITAT 2014)

3. METHODS

“Land tenure analysis should be performed at an early stage of the design of development projects which will help to ensure and analyze whether the existing rights are made more secure and the conflicts are reduced or not” (FAO 2002). Indicators are commonly used to assess land tenure security, land administration, economic development, environment and even health sector, however, development and operationalization of indicators can be problematic, biased and criticized (D. Simbizi et al. 2014). Experts' opinion, stakeholders view, and rigorous research are prerequisite

to develop indicators so assessing through indicators from desk study can be biased with limited scope. Logical Framework Analysis also assesses indicators and tends to assume a linear progression of effects regardless of contextual conditions (ibid.). Due to the difficulty in deriving indicators, LFA is not used to assess land tenure security in this research.

To analyze the land tenure system in limited time frame through desk research, SWOT analysis could be an appropriate method. In this research, SWOT analysis has been performed to assess the status of land tenure security in Nepal. SWOT refers to Strength, Weakness, Opportunity and Threats and is a comprehensive technique to analyze and compare external and internal characteristics of an organization, of an organizing system or project. (de Vries 2016). The advantage of SWOT analysis is that it is easily understood and the matrix of four quadrants can be quickly derived and ultimately it can be used for strategic planning (ibid). In this research, issues of internal environment and effect of the external environment over land tenure system and security are described in the form of SWOT.

4. DISCUSSION

4.1 History of Land Tenure System

4.1.1 Before 1950 AD (2007 BS):

Before the announcement of democracy in 1950 and promulgation of the new constitution, *Rana* dynasty ruled the then-kingdom of Nepal. *Rana* dynasty was autocratic and characterized by tyranny and isolationism. In that era crown was the supreme owner of land with intermediary customary ownership under various arrangements like *Raikar*, *guthi*, *birta*, *kipat* amongst others (Acharya 2008). Before 1950, land tenure system was characterized by extreme heterogeneity (Chalise n.d.). A brief description of those tenure is described below.

Raikar

The term *Raikar* is derived from Sanskrit words *Rajya* (state) and *kara* (tax).The lands

on which taxes are vested and were on official record of the then government is called *Raikar* land (Acharya 2008). After enactment of land (Survey and Measurement) Act 1963, all those lands were surveyed and registered to respective landholders. This land tenure is similar to freehold tenure.

Birta

The term *Birta* is derived from Sanskrit word *britti* meaning livelihood (Acharya 2008). Birta is the granted land by the state to the individuals for their bravery or loyalty usually on a tax-free and either heritable or in heritable basis (CSRC et al. 2009). Birta was the symbol of high social and economic status and more than one-third of Nepal's farmland was under this tenure before the 1950s (ibid.). Birta Land Abolition Act was promulgated on 1957 and all such lands were converted to *raikar* and *guthi* tenure.

Guthi

Guthi term is derived from Sanskrit word *gosthi* meaning council. It is the type of land which is allocated for managing the expenses for certain religious, charitable and social functions. These are similar to customary lands registered to religious and cultural institutions (Acharya 2008). Currently, 2% farmland belongs to this type of tenure and administered by a different government institution, *Guthi* Corporation under Ministry of Agriculture, Land Management and Cooperative (CSRC et al. 2009). Basically, *guthi* land has two types; *raj guthi* referring to the type of *guthi* land of public nature and *nijiguthi* referring to the type of *guthi* land with transaction and inheritance right to the individual.

Jagir

Jagir means a job and it is the land authorized to civil servants to collect and use the land tax in terms of cash or crops for a certain period in lieu of salary (CSRC et al. 2009). Most of the *Jagir* lands belonged to the relatives and near ones of *Rana* so it was abolished after the end of *Rana* dynasty in 1950 (ibid.).

Rakam

Rakam literally means money. These are the lands provided to carpenters, bricklayers, musicians and similar professionals for their work (CSRC et al. 2009). This type of land was prevalent mainly in Kathmandu Valley.

Kipat

This is the typical example of customary land tenure system in Nepal. This is the land collectively owned and cultivated by *Limbu* community of eastern hill of Nepal (CSRC et al. 2009). Such lands could be sold and inherited within the same community and were converted into *raikar* tenure in 1961.

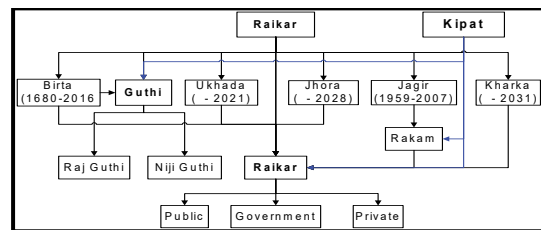


Figure 1: History of land tenure system in Nepal. Source: CSRC et al. (2009)

4.1.2 After 1950 AD (2007 BS)

The political movement of 1950 against *Rana* dynasty resulted in democracy and ultimately political awakening, social and economic development. This political change had a very affirmative impact on land administration sector to abolish a different complex form of landlord favoring tenure system to tenants favored system. Most of the customary form of land tenure was abolished after 1950 change and many issues were resolved after the systematic cadastral survey and registration initiated from 1963 (Acharya 2008). Different forms of land tenure in the past and its conversion time into other type is shown in figure 1.

4.2 Current Land Tenure System

Nepal follows deed registration system with some improvements over it. The current Land tenure system is not as complex as in the past. Figure 2 shows the current land tenure system.

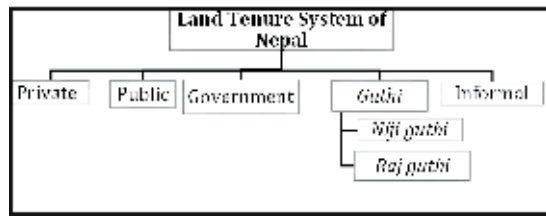


Figure 2: Current land tenure system of Nepal.
Source: Acharya (2008); CSRC et al. (2009)

After the systematic cadastral survey and registration, most of the previous forms of land were converted to private, public or government tenure except for *Guthi* land. Private land is similar to freehold tenure having absolute ownership. The owners of private land have right to use, lease, mortgage, transfer and built upon his/her land. his land According to Land (Survey & Measurement) Act 1963, public land means and includes roads, wells, water conduits, shores, ponds and banks thereof, exits for chattels, pasture lands, graveyards, burial sites, inns, *Pauwas*, *Dewals*, religious meditation sites, memorials, temples, shrines, *Chowk*, *Dawali*, sewerage, *Chautaro*, lands where fairs, markets and public entertainment or sports sites are located, which been used publicly but nor personally since ancient times, and such other lands as prescribed to be the public land by the Government of Nepal, by a notification in the Nepal Gazette. Similarly, government land is the land where there exit roads, railway, government building or office and this expression also includes forest, shrubs, jungle, river, streams, *Nadi Ukas*, lake, pond and ridge thereof, main canal (*Nahar*), water course (*Kulo*), Barron *Ailani*, *Parti* and other types of land, *Bhir*, *Pahara*, *Dagar*, shore (*Bagar*) which is under the control of Government and such other lands as a Government land as prescribed by Government of Nepal by a Notification in the Nepal Gazette. *Raj guthi* are the form of land tenure where concerned *guthi* has the ownership over that land whereas in case of *Niji guthi*, individuals have ownership to the land and pay tax to the *guthi* corporation.

An informal form of tenure is increasing in urban and semi-urban areas. Some of these areas are surveyed and brought into register by different

commissions formed by the government at different times. But most of the informal areas are not in the record of government institutions.

4.3 Implications of Land Tenure System

Many complex forms of land tenure in the past has been resolved by different acts and land reform initiatives. However, it is more challenging to manage the issues of tenants, internally displaced people, bonded labor, landless and *guthi* land. Land Related Act 1964 was formulated to guide the land reform program but the fourth amendment of that Act 1997 terminated the rights of unregistered tenants in the given time frame which has said to be affected 0.45 million unregistered tenants (FAO 2010).

The number of internally displaced people has been increased after the internal civil war of 12 years starting from 1995. Nepal is in the vulnerable zone for natural disasters like earthquake, flooding, and landslide so land tenure of people living in disaster-prone area is insecure. The most vulnerable households for disasters are also the people with insecure land tenure like sharecroppers, farm laborers and informal settlers (Mitchell 2010). Besides the loss of lives and buildings, man-made and natural disaster both causes loss of access to land and real estate property (de Vries 2016). April 2015 earthquake of 7.8 MW caused many people to be homeless and internal displacement towards urban and semi-urban area was increased. The tenure rights of displaced people from above-mentioned reasons have not been properly addressed and those people are at high risk of eviction from the place they are living. After the Earthquake of 2015, Nepal is in the process of reconstruction and rehabilitation and facing several problems arising from land tenure practices. NRA provides support for the earthquake affected people for house reconstruction however it is mandatory to have land ownership certificate to get it. Many poor people living in Public lands without land title again become the victim. There are many issues related to land tenure security in Nepal which need to be resolved applying proper tools.

Different land reform and informal settlement management commissions formed by the government in different time with limited timeframe have not been able to solve the issue in long term rather than producing reports. Provision of ending dual ownership is complex and rights of unregistered tenants are not guaranteed in the legislations.

4.4 SWOT Analysis on the status of land tenure security

SWOT analysis has been performed to assess the status of land tenure security in Nepal. Strength, Weakness, Opportunity and Threat has been described below.

4.4.1 Strength

According to the data of UNHABITAT (2014), less than 30% of developing countries are currently covered by some form of land registration however in Nepalese context; more than 90% of the cultivated lands are registered. According to Land Revenue Act 1978, land revenue office should register all type of land that means all parcels in Nepal are subjected to be registered (Acharya 2008). Deed of the transaction, cadastral map and initial register prepared during cadastral survey secure the right held over land. Nepal has well established organizations for registry and cadastre in district level. District level survey office has the authority for cadastral surveying and first registration and district land revenue office has the authority for registration. They are accountable for hearing complaints and solving the issues on land disputes, encroachment and grabbing in the local level.

Article 25 of the constitution of Nepal has secured the right to property and article 37 has secured the right to shelter. These rights protect the poor people from forced eviction. Land Related Act 1964 has fixed the ceiling in the area of land holding that is the great initiative for controlling skewed land distribution. Since 2012 land use policy has been formulated for land use planning and zoning.

Government of Nepal has initiated different programs to promote access and secure the

tenure of marginalized communities to land like exemption of 25% registration fee if the land is registered in the name woman, implementation of leasehold forestry to increase access of poor and marginalized people in the land resources, buffer zone program in national park to improve access to land for indigenous peoples living nearby the park, community forestry, land to freed *kamaiya* (bonded labor), rehabilitation of freed *haliya*(FAO 2010).

Professionals in cadastral organizations are trained in technical disciplines and also educated about right of tenant, poor and marginalized people. There is digitalized data of cadaster and register which is the basis for proper land administration and development of land information system that will minimize the chance of fraud in maps and register and enable landowners to access their information easily.

4.4.2 Weakness

Despite the initiative in the new constitution of Nepal addressing the issues of right of shelter and right to hold property, land tenure insecurity prevails in reality. Most of the cultivated lands are subjected to be registered but the rights of people living and cultivating outside of the surveyed area are not secured. Maps and register created from the first cadastral survey are inaccurate and in poor condition, so boundary and records of land parcels can't be unambiguously identified. Administration and management of *guthi* land is complex and ambiguous. Tenure security of the people living in *guthi* land is also vulnerable. Areas outside of cultivated and built-up areas are not surveyed and brought into maps and register. So, there is a lack of actual data and recordation about the people outside surveyed area and that population is out of formal records.

There is no permanent government institution to settle the issue of informal settlement and unmanaged housing. The government occasionally forms the commission to solve the issue but this is not effective since it is political nomination consisting of members with limited knowledge of the issue.

Nepal follows deed registration system so it is difficult to claim the compensation in fraud

cases of land registration and transaction. There is a lack of coordination among land related organizations and landless and poor people suffer more from this. Human resources in land revenue and land reform organizations are general administrators who are more concerned with accountability and proof in the legal documents with limited awareness of the rights of landless and poor (CSRC et al. 2009). According to the study by transparency international Nepal in 2016, Land revenue office is the most corrupt organization in Nepal that implies that it is very difficult for the poor people with insecure land rights to approach such offices and put forward their issues. There is an insufficient financial and technical resource to improve the tenure security.

4.4.3 Opportunity

After many political and social movements, people are aware of their rights and raise their voice against illegal deeds and forced evictions. Almost all parties' manifesto contains the issue of land reform and are willing to address the issue of informal settlements and landless people. Bilateral agencies are supporting the issues of pro-poor land management, agricultural development through innovative programs like Fit for Purpose Land Administration, GLTN, VGGT amongst others to secure the rights of landless and poor and to improve tenure security.

There are many civil organizations working in the sector of protecting the rights of slums and their tenure security. After the April 2015, 7.8 Mw earthquake people are aware of public space preservation and land use management. The government of Nepal declared it to be the federal republic of Nepal and is in the process of implementing decentralization in every sector so poor people might get access to the service agencies more easily in coming days. Over sighting agencies like Commission for Investigating the Abuse of Authority and National Vigilance Centre are active against the illegal deeds that indirectly helps to improve the tenure security.

4.4.4 Threats

The number of informal settlement and internally displaced people has increased tremendously

after natural disaster and civil war. Nepal is one of the fastest urbanizing country so pressure on land is increasing in urban area. That may increase the chance of adversely possessing the public land and may inhibit the ongoing initiative to improve the security of existing informal settlement. The land market is under the limited control of government body. Increasing commoditization and commercialization of land are the threats to land tenure arrangements. Political interference in the case of adverse possession are also causing threat to land tenure security.

5. Conclusion

This paper analyzed the land tenure system, its history and its implication and finally examined the status of tenure security in Nepal. From the SWOT analysis, it is shown that stable organization, registration of most of the cultivated and built-up area, new policy and projects to protect the right of landless has improved the land tenure security. With existing strength and taking support from the strong civil organization, media, and aware citizen, tenure insecurity induced by the behavior of citizen can be minimized.

Land tenure insecurity arising from political, legislative and organizational behavior should be managed by appropriate reform and interventions. To improve tenure security, all of the lands should be surveyed and brought into registration. Land administration system should be restructured with integrated land laws and educated land professionals. High-level land authority should be established to protect the right of poor living on the bank of the river, squatter and informal settlement. Landless and poor should be educated and organized to raise their issues. The appropriate scientific methodology for land valuation should be developed. Integrated land use zoning has to be developed and rural renewable projects should be implemented to minimize the pressure in the urban area. Cadastral resurvey should be done on demand basis with proper methodology and guidelines for re-registration. Political parties should take this agenda seriously and have to provide sufficient financial and technical resource to improve the tenure security.

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