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Land Tenure System and Security of Kumal Community in Gorkha

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ABSTRACT

This paper analyzes the land tenure system, its history, demographic and socio-economic characteristics and tenure ownership and security of Kumal community in Gorkha district of Nepal. 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. The objective of this paper is to analyze the existing land tenure system of Kumal community of Gorkha by reviewing the history of the tenure system and current tenure system, and carrying out HH survey to improve the tenure ownership and security. However, the tenure rights of socially and economically disadvantaged community like Kumals 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 household survey. 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.

KEYWORDS

Community, HH survey, Indigenous, Kumal, Land, Land tenure, Security, Sharecropping

INTRODUCTION

In most of the least developed countries, unequal distribution of landownership is most important determining factor for prevailing unequal distribution of wealth and income in rural areas (Todaro, 1988). For many Nepalese, land is a primary source of livelihood and security, as well as a symbol of status and social capital. However, with the country's growing population, land is a diminishing per-head asset (Sharma et al., 2014). 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. 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 (Todaro, 1988). There are thousands of peasants who cannot make a living just from their land. The land distribution is skewed, ranging from a small group of landowners with large holdings to a considerable number of agriculturally landless households, as 5% of land owners hold 37% of the total arable land (Wily et al., 2009). Various studies have shown that this skewed land distribution has had a significant impact on people below the poverty line, and a large chunk of the population remains functionally landless (Upreti et al., 2008). Studies have shown that such skewed land distribution and gross disparities in land ownership are some of the major sources of conflict and perceptions of injustice (Upreti et al., 2008).

According to National Planning Commission of Nepal 1998, over 70% of farmers own less than one hectare of arable land (UNDP, 2014). The number of landless is more than 1.5 million and the problem of informal settlement is increasing (FAO, 2010). Total number of surveyed land parcels in 2008 was around 25 million and the number has been increasing in high rate due to haphazard and uncontrolled fragmentation of land plots (Acharya, 2008). 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 (UNHABITAT, 2008). 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. 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.

Land tenure is the relationship of people or groups interacting in a society with respect to land. It is important in ensuring that the relationship of people with concern to land is improved for their benefit. Land as a factor of production is of immense importance. It has a determining influence in moulding the life, occupations and standard of living of a people. Land tenure system is important for locating actual owner, developing agriculture and influencing social structures. The land ownership pattern still determines the economic prosperity, social status and the political. The political process, which, throughout the history favored a certain class of people, and poorly performed state led land reform initiatives resulted into the unequal, very much skewed land distribution among the land dependent households, institutionalizing the inequalities among the citizens. The exclusion of the poor from access to productive assets, notably land, is one of the primary reasons for perpetuating the Kumal community's poverty, and restricting their full potential. Inequity in land distribution is brought about by a system of land tenure where the actual tillers of the land (tenants) do not have land ownership and security. Kumals have been engaging in share cropping cropping without adequate land ownership and security in Gorkha.

Historical Perspective of Land Tenure System

The people of today's territory of Nepal have witnessed a variety of land tenure systems and policies throughout its history, characterized by feudal relations. At certain times the royal families of the Baisi and Chaubisi Raj (before its unification in 1769) and the religious institutions distributed shares of the produce from land, but cultivators were not entitled to own land; while at other times the king "granted" land title to the people who were dear and near to him. In the Khas Kingdom, Birta, Guthi, Jagir, Raikar

and Sera systems of land ownership came into practice. Birta was the land granted to those loyal to the rulers, while guthi was the land owned by religious institutions. Jagir was the land given to the government servants for their service, while raikar was the land granted to commoners on the condition that they paid taxes regularly. The land owned by the palace was called sera. Cultivators without access to raikar land worked as halis or gothalas (herdsmen), in many cases as bonded labourers (Regmi, 1976). During the period of the establishment of the modern state of Nepal in the late eighteenth century, efforts were made to increase the landholding of the kingdom. Prithivi Narayan Shah, who unified this until-then fragmented country, was keen to control the productive lands of Kathmandu Valley and the Tarai. He distributed birta and jagir land to his followers, especially his soldiers, who helped him in the expansion of territory.

The policies of the newly unified state, in order to expand its power and appropriate surplus from its newly annexed territories, were instrumental in subordinating the older social formation and making the state the ultimate landowner, which was termed by some as "state landlordism" (Sugden, 2013). Some ethnic groups, such as the Rais, Limbus and Sherpas, practiced their own land tenure system. Land was used under the kipat system as common property of patrilineal groups, and only became de jure under the national system after the 1964 Land Reform Act (Regmi, 1976); although in some remote regions, some forms of legal pluralism can be observed even today. From the early days, various rulers in Nepal have tried to interpret the existing land system to optimize land tax income and consolidate their own dominance. This was particularly noticeable in the Rana Regime (1846–1951). For example, in 1861, the Rana government attempted to reorganize the administration in Nepal and introduced in the Tarai the jimidari system, as a result of which a system of rural elite became established, which was enforced to claim land and exploit unpaid labour (Muller-Boker, 1999). The distribution of birta grants also intensified significantly under the Rana regime (Regmi, 1976). 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.

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 Act 1963, all those lands were surveyed and registered to respective landholders. This land tenure is similar to freehold tenure. Birta land is the granted land by the state to the individuals for their bravery or loyalty usually on a tax-free and either heritable or inheritable 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. Birta Land Abolition Act was promulgated on 1957 and all such lands were converted to raikar and guthi tenure. Guthi land 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 with transaction and inheritance right to the individual.

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

Nepal follows deed registration system with some improvements over it. The current Land tenure system is not as complex as in the past. 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. According to Land 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. 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), Barren Ailani, Parti and other which is under the control of Government. An informal form of tenure is increasing in urban and semi-urban areas. But most of the informal areas are not in the record of government institutions (Nepal and Marasini, 2076).

Data and Method

The research study was purposively carried out in two former Kumal prevalent VDCs and 1 municipality of Gorkha district in western development region of Nepal. The VDCs selected for the study were Chhoprak and Chyangli and Gorkha municipality. The sites in Chhoprak VDC and Gorkha municipality are situated on the banks of Daraudi River in Gorkha distirct of Nepal. Similalrly, Chyangli VDC is located on the bank of the Marsyangdi River. Household survey was conducted at village level in 2015 to obtain information on socioeconomic conditions. A structured questionnaire was prepared to record relevant information. A total of 186 households of Kumals (56 HHs in Chhoprak, and 65 HHs each in Chyangli and 10 Kilo) and 1072 individuals therein were randomly selected from these 3 villages for interviews following the focus group discussion. Local people as key informants were also consulted to collect additional information about phenomena such as the land tenure system and necessary information were derived.

RESULTS AND DISCUSSIONS

Demographic and Socio-economic Characteristics

Out of 186 total respondents, 65 and 121 respondents were males and females respectively. The total population of the sample HHs was 1072. Of this total population, 49.16% and 50.84% were males and females respectively. As revealed by the study, the size of the household in the study area was found to be 5.7 which are higher than the national average (4.8). The study areas selected for this study represent mostly the rural areas and amongst the Kumals, a tribal community; therefore, this variation in the family size was observed. The distribution of sampled population by sex in the study area is depicted in the table below.

Table-1: Distribution of sampled population by sex

| Sn | Program VDCs | Sample Popu | Total | |
|----|--------------|-------------|--------|-------|
| | | Male | Female | Total |
| 1 | Chhoprak | 179 | 190 | 369 |
| | Gorkha | | | |
| 2 | Municipality | 174 | 182 | 356 |
| 3 | Chyangli | 174 | 173 | 347 |
| | TOTAL | 527 | 545 | 1072 |

(Source: Field Survey, 2015)

Males head about 75.27% of the total sampled households in the study area indicating male dominance in the Kumal community. About 50% of the sampled populations were dependent population. The average age of marriage was found to be 20.07 indicating dominance of early marriage. As reported, 30.88% of the sampled population was found not attending the school in the study area. There were three distinct economic activities in which the Kumals were engaged in the past. The predominant one was undoubtedly agriculture-because every household was engaged in farming. The other important economic activity for the Kumals was of making clay pots. The third one was fishing in both fresh water rivers and lakes. As revealed by the study, more than 90% of the sampled households' main occupation was found to be subsistence agriculture. Livestock is integrated with farming systems of Kumals in the study area.

Agriculture is playing a crucial role in the life of an economy of the Kumal households in the study area. Agriculture has not only provided food and raw material but also the employment opportunities to a very large proportion Kumal household. Sampled households who did not have adequate productive farm lands would engage in share cropping (Adhiyan) system of cultivation. Most of the adult males and females participate in Parma (mutual exchange of labour) which involves the sharing of human laborers in cultivating and harvesting the food crops. In an economy when cash is not readily available the effectiveness of this practice is immense. This is similar to the practice of pareli among the Limbus in Eastern Nepal (Caplan, 1970).

Some households reported that either their parents / grandparents engaged in making the clay pots and sold them in the village as well as in the surrounding areas. Although, the traditional occupation of the Kumal households was clay pot making but this occupation is already extinct at present. The vanishing popularity of their skills could be either tough in competition with the imported metal and plastic utensils or lack of knowledge in improving their existing skills. The practice of agricultural wage labor has also been one of the indispensable components of the overall economy of the Kumals. Some local Kumal households still engage in laborer exchange during production season. Not only does the

practice of agricultural labor have historical significance, but Kumals all over Nepal are found to have been engaged in doing manual works to earn their living (Caplan, 1970). Some of the households also reported foreign employment. Kumals in the study area has traditional skills of fishing. Some of them have skills on mason and carpentry as well.

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79.57% of them have been staying in this village for many generations whereas 20.43% of them came from other adjacent places. Of migrant households, 89.47% of them were coming from within the village followed by outside the village within the district (7.89%) and outside the district (2.63%). 59.68% of the sample households had walls made from mud bonded –bricks and stones. The roofing was more varied and evenly distributed across households, with 58.60% of the sampled households were having CGI sheet roofs. 68.82% of the sample household reported that they had earthen floor indicating poor status and living conditions. 76.88% of the households had public taps (piped water) for drinking water supply, which is considered safe as a source of drinking water. While taking an account of ownership of the sources of the drinking water supply facilities in the study area, 53.76% of the HHs reported their sources were community in the study area.

Table-2: Distribution of sampled HHs by Sources of water

| Sn | Program VDCs | Drinking Water Supply facilities by sources | | | |
|----|---------------------|---|----------|------|-------------|
| | | Tap | Tub well | Well | Water spurt |
| 1 | Chhoprak | 50 | 0 | 6 | 0 |
| 2 | Gorkha Municipality | 57 | 5 | 1 | 2 |
| 3 | Chyangli | 36 | 12 | 16 | 1 |
| | TOTAL | 143 | 17 | 23 | 3 |

(Source: Field Survey, 2015)

Majority of the households (97.8%) were found to have used firewood solely or jointly as the sources of main cooking fuel across the study area. Out of total firewood using households (182), 76.92% of them reported private forests as the sources of firewood for cooking purposes followed by community forest (18.13%), government forest (3.29%) and others (1.64%). 61.29% of surveyed HHs had access to the electricity as a source of light. Kerosene is the second common source of light with 36.02 percent household using it followed by electricity +diyalo (1.08%), kerosene +electricity (0.54%), electricity +solar (0.54%) and diyalo (0.54%). As reported, 95.70% of the sampled households have access to family latrines. 70% of the households are using traditional cooking stoves. The mean means of communication of 34.41% sampled households was found to be radio + TV + telephone/mobile.

Land Tenure System of Surveyed HHs

Entire surveyed HHs had access to lands. 82.26% of the sampled households reported having own raikar (registered) land (house land and cultivated land) followed by rented in land (10.75%), rented out land (5.38%), Aakada/Ukhada/Block/Guthi/Birta (1.08%) and public/government or parti land (0.54%). The total land owned by the sampled households is 2077 ropanies. The average size of the sampled HHs (186) in the study area was found to be only 0.5 hac which is less than the national average. The types of the land owned by the sampled households is presented below.

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Table-3: Distribution of HHs by types of land owned

| Sn | Program VDCs | Types of land owned by the sample HHs | | | | | |
|-------|-----------------|---------------------------------------|-----------------|-------------------------------------|-----------------------|----------------|--|
| | | Own regd. land | Rented out land | Aakada/Ukhada/ Block/Guthi/Birta | Public/ Govt/Parti | Rented in land | |
| 1 | Chhoprak | 44 | 1 | 2 | 0 | 9 | |
| 2 | Gorkha | | | | | | |
| | Municipality | 52 | 5 | 0 | 1 | 7 | |
| 3 | Chyangli | 57 | 4 | 0 | 0 | 4 | |
| Total | | 153 | 10 | 2 | 1 | 20 | |

(Source: Field Survey, 2015)

Out of total lands owned, only 60.75% of HHs was having irrigated khet (low land). 13.98% of them reported having unirrigated khet land. 90.32% had access to non-irrigated land (pakho Bari). 14.52% of the households reported owning khoriya land. 1.08 of total HHs had grazing/barren land. No any household had garden and ponds. 0.53% HHs also had busy land. 2.68% HHs also reported having forest lands. 23.11% of the total surveyed HHs was revealed to have cultivated the lands of local landlords. Share cropping could be one of the livelihood strategies for landless and poor resource base HHs. 83.72% were share croppers followed by thekka/hunda (6.98%), haliya/charuwa (4.65%), registered tenant (2.33%) and trust land cultivator (2.33%). The average year of cultivating others' lands was found to be 15.33 years. Sharecropping system has been continued as the ultimate livelihood option for the landless and poor marginalized Kumals in the study area. This also has enabled landless Kumal HHs get access to land and given the landlords chances to cultivate and better husband their land. The sharecropping system in the study area was emerged as the result of unequal land holding, especially due to marginalization of Kumals and accumulation of land to few landlords. This inequality can be traced back to the feudal structure of country and autocratic regime of Rana until mid-20th century.

Ownership refers to the land owned with all legal authority and documents, and with all the rights to inherit, divide, sell, or use for the desired purpose. Ownership and access to land and land-based resources are still principal determinants of the survival and economic status of the vast majority of the people in Nepal. Given the mostly subsistence-based production system and skewed land distribution, the imperative is that access to this basic resource be made more equitable. Among the lands owned by the surveyed HHs (186), 85.5% of such lands were found in ownership of male counterparts followed by females (13.97%) and joint ownership (0.54%) indicating deprivation of women from access to and ownership of land in the study area. Thus land ownership for women is required not only for the practical needs (needs related to bettering their condition within the given power relations) of women, but also for contributing to the accomplishment of their strategic interests (interests related to improve their position and gain power) amongst Kumal community in the study area and in Nepal as a whole.

80.36% of the households reported the source of male owned land was inherited followed by personal earning (2.38%) and both (17.3%). The sources of women owned land was found to be personal earning (44.7%) followed by tenants share (25.5%), inherited property (19.1%) and dowry (10.6%). The sources of these jointly owned lands were inheritated property, personal earning, tenants share and dowry. 25.26% of their private land was banned from usage by the government agency and other agencies in the study area. Of this, 74.47% reported that their land was taken by the government agencies followed by the VDC (25.5%). The total area of the land encroached by the government agencies and VDCs was 54

ropanies. Of this, 85.19% of the encroached land for road construction followed by others (12.04%) and construction of play grounds (2.78%) in the study area. No any households were found receiving compensation. This had certainly violated the land rights of the affected households and has further marginalized this community. As revealed, 2.70% of the sampled households were found to have sold their lands within the last 10 years time of surveyed year. The land sold by these HHs were unirrigated land (pakho Bari). The total amount of such lands sold was 12 ropanies.

Similarly, 16.10% of the surveyed households reported that they purchased lands within last 10 years of the surveyed year in the study area. The total amount of the lands purchased by these households was 102 ropanies. 75% of the household land purchased was under the ownership of females. This is a good indication of increasing access to and control of Kumal women to lands and resources in the study area. Out of total sampled households, 10.75% of HHs reported renting in of lands. The total amount of land rented in by these renting in households was revealed to be 35 ropanies. 86.67% of the households reported of renting in of the lands for share cropping followed by contract (13.33%). Renting-in of land was basically done as an annual contract in the form of sharecropping in the study area according to which 50% of the produce from the rented-in land had to be given to the owner of the land. There, however, was a provision that the expenses were also shared between the tenant and the owner. 5.37% of the surveyed HHs reported renting out their some or all of their land to others. The land rented out included Khet, unirrigated khet and upland (Bari). The total amount of the rented out land attributed to irrigated khet, unirrigated khet and non-irrigated Bari lands was revealed to be 108 ropanies. 82.60% of the renting out land was for share cropping followed by contract (17.40%) in the study area.

CONCLUSION

Land is the primary input and factor of production which is not consumed but without which no production is possible. It is this power that gives land its value and is the power that enables the owner of valuable land to harvest reaps. Tenure is a social construct that defines the relationships between individuals and groups of individuals by which rights and obligations are defined with respect to control and use of land. The centrality of land in all dimensions of rural life in the context of Nepal means that the analysis of land tenure issues should be broadened from its traditional links with issues including all aspects of power/ politics and social position. Access to land can also be provided systematically through land reform interventions by national governments, often as a result of policies to correct historic injustices and to distribute land more equitably Security of tenure is the certainty that a person's rights to land will be recognized by others and protected in cases of specific challenges. The traditional form of land tenure in Nepal was under state ownership. The land simply belonged to the state and its rulers.

After 1946, Raikar, Birta, Jagir, Rakam, Kipat and Guthi were six major forms of land tenure. All except Guthi were subsequently converted into Raikar and Government land, public lands, Private (Raikar) lands, Trust (Guthi) lands and Informal land are the current land tenure types in Nepal today. The 4/5th proportion of the sampled HHs owned raikar land but the land owned by Kumal HHs is not adequate enough for subsistence. The share cropping is common phenomenon and the main livelihood strategy for the poor and landless Kumal HHs in the study area. They lack private ownership over the land they have been cultivating as share croppers and contractors. The magic of private ownership turns dust into gold if they are given tenure and tenancy rights. So, it is recommendable to give the share croppers or contractors a secured right to a large mountain to turn the land into a garden.

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