

Land in the Realm of Exclusion and Globalization

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The context

Land is a fundamental natural asset for the resource poor farmers for their livelihoods and social security. Land, either state owned or private property, is a basic asset, which can be exploited in many forms for the benefits of individuals or the nation as a whole. It provides personal identity to individual landholders, raise social status, and increase access to other production resources. But this precious resource is remained as a distant dream for poor and excluded groups in developing countries because of deeply rooted feudal systems shaped by customary believes and highly skewed power relations. In addition, increasing threats of land consolidation and captures by powerful neo-elites as a result of globalization are becoming new challenges for the land rights movement. Therefore, proper analysis of existing land tenure systems and practices and its linkage with emerging global concerns and issues is essential. Furthermore, realization of complexity of international provisions and national commitments needed to be properly understood to devise the instruments for effective land rights movement and subsequent exercise of rights

Some key Issues:

Exclusion and discrimination

Exclusion and discrimination are some of the major constraints in achieving equitable land titles. Though women and indigenous communities are cultivators to ensure household and national food security and protect and promote biodiversity and environment, their contributions are rarely recognized in policy and practices. The land titles are blatantly denied just on the basis of class~ caste and gender in many parts of the world. For example, the dalit communities of Nepal were denied for land rights since the time of different work-based classifications (Brahmin, Chhetri, Vaishya and Sudra) (Dulal, 2004). They are been working as Haliya, and or in bali pratha and mostly paid on kinds such as fixed amount of grain on certain period of the year but denied of their claim over the land despite their generation-to-generation tilling services. Similarly, large masses of indigenous and Terai communities are denied of land rights due to lack of their citizenship. This has been further complicated because of lack of their representation in decision-making. Another denied category is women, whose rights are denied due to the categorization of girls as "passer by" and women as "passer in" in the family. So there is no proper mechanism to address their concerns either in their parental or marital home place. Consequently, they are excluded from various benefits associated with land titles. The land titles do not only secure the permanent form of their settlement, it also equally raise the level of confidence to those communities to improve their bargaining capacity and subsequently able to challenge other forms of oppression within households and the society. This highlights the

importance of land titles not only for economic improvement but also for improving their relative position within and outside household.

Inequities rooted in national laws

Several forms of systematic exclusion can be found in national laws in many countries. For example, Kenya's Law of Succession (1981) excludes the land titles to Muslims and pastoralist population in certain districts. The national laws in many parts of the world especially in Asia do not recognize the rights of women on inherited property and or family property. The dominant perception of farmer is a 'male farmer' and consequently a head of household lays foundation for male focused laws. Therefore, any forms of land either 'inherited' or 'state transfers' are accessible to the well off categories and men only. In cases, where women have access and control over parental property, they are facing management problem when they wish to settle it formally. Thus the limited and fuzzy form of rights provided to women force them to deal it as family affairs and in most of cases, it denies their access to acquire proper compensation, particularly when the male members are not co-operative.

Gaps in policies and practices on land issues

Several review reports show that though there are sporadic efforts taking place in creating space for women and indigenous community to acquire land, it is still not in their full control due to various complexities and inadequacies in policy and practices. Some of the examples are shared below:

Country	Status of gender and ethnic minority in terms of access on land resources
Africa	
Ghana	The nation had tried to protect the rights of widows and children through some Laws but most of them are still unaware of those provisions
Kenya	A task force set up to deal on vulnerability of women but still remained pending due to the resistance on affirmative actions around the land issues.
Malawi	1990 Constitution guarantees women's' right to acquire property but proper mechanism to ensure the decision in consistence with the constitution is still lacking.
Mozambique	1990 constitution provides equality between men and women. Community right is granted on communal land but is still not able to address the distributional inequalities, which disadvantage the peasant families.
Tanzania	The Land Act and Village Land Act 1999 prescribes for co-ownership. But in practice, it has not been able to address the concerns around land scarcity and dispossession. At the same time, there is intense focus on passing those laws without proper thought on monitoring mechanisms.
Uganda	1998 Land Act still does exclude women from acquiring the land property. The decisions of the local councils generally are gender biased when there are martial property cases comes the most.
Asia	In most Asian countries such as India, Nepal, Pakistan, joint family property to be inherited by son is a common phenomenon. However, in certain states of India such as Kerala, Tamil Nadu and Andhra Pradesh have abolished such system which allow son only to inherit the property as provisioned by the Hindu Succession Act 1956. In Vietnam, there is a provision which requires signature from wife while selling land but it is generally been done under pressure than her own interest.
Latin America	In most of the countries, the Constitution as well as Civil Codes had recognised dual headed household system but there is very low incidence of joins registration. The issue of joint ownership also remained silent where the land is already in the name of husband only. The 2001 Affirmative Action Programme of Brazil also targets for 30% female representation in credit schemes to purchase land, access trainings etc. but has not identified specific concerns of single, divorced and widowed women. Similarly, the Latin American Civil Codes, which provides equal inheritance rights to children but the daughters, are still excluded from this titles. Similarly, the law of Brazil provides access to only one quarter of property for the widow, but she cannot hold it anymore if, remarries. Another scheme of land . bank programme created by 1999 Decree in Guatemala requires joint titles on land as well as demand for credit but as a backdrop, because of insufficient funding for land bank, the peasant men and women's access have been severely restricted.

Source: Action Aid International 2004; Economic and Social Council,UN

Global threats

Land is one of scarce and precious resources where the market intervention is very prominent in the 21st century. In the increasing state of liberalization and privatization, ongoing socio economic changes exerting tremendous pressure on land resource and gives rise to new forms of exclusion and disentitlements. The example of systematic exclusion of poor from the land can be seen in the following case:

Corporate Agriculture Farming Ordinance, Pakistan

The new Corporate Agriculture Farming (CAF) Ordinance of Pakistan is one example of corporate control on land resources. The main features of the ordinance are 1) CAF is taken as an industry 2) there will be no land ceiling for the agriculture companies 3) no labour law for corporate agriculture labour 4) zero tariff for CAF related Imported machineries 5) can be bought and or lease land for initial 50 years and extended for another 49 years 6) special financial support schemes through national banks and financial institutions. It is introduced with an assumption to bring foreign investment, Improve produclivity and quality of export oriented agriculture products. For the compliance with these provisions, the Land Reform Ordinance was promulgated in 2002; it has completely closed down the hope landless to get lands from the state owned property. Similarly, the small-scale farming will not be in a position to compete with those highly invested and state supported and they will loose out their business. The ordinance has been passed despite of huge opposition from civil society and human rights activities.

The increasing trend of land consolidation can be clearly understood from the abovementioned case of Pakistan. Similarly, other forms of exclusion and denial can be seen in other developing countries. For example, in Philippines, farmers are increasingly engaged in commercial farming with the initial support from corporations to purchase agro inputs. The recent trends showed that they are not able to harvest their products as the farm gate price of the crop is down below the cheap imports from developed countries, which restricts them to compete in the market. Consequently, the farmers are unable to pay the loan and the corporations are increasingly holding those lands and the farmers are gradually getting displaced.

Similarly, the encroachment through technical and policy supports from bilateral and multilateral institution is also equally threatening in the context of land distribution and utilisation. The recent land bank , programme proposed by the government of Nepal is another form of disregarding the available forms of proper land resource ~ management- Though, landless poor are supposed to get lands from the government, it would be very difficult for them to pay back the property of land at the set period of time, and virtually they will not able to retain the given land. The government is ready to adopt the land bank program as a part of globalisation rather than to resolve land problems. The government is not yet properly documenting the state owned land as well as private land beyond the ceiling. It is believed that proper land information and distribution could resolve 60% of land related issues in Nepal.

Linkage with international instruments

There are series of binding and non-binding international instruments that deal on land property issues in relation to food security and livelihoods. There are several provisions that directly or indirectly deal with land ownership and use by the indigenous communities. For example, article 17 of the UDHR and article 5 of International Convention on the Elimination of All Forms of Racial Discrimination has ensured everyone's right to own property. Similarly, the committee on the Elimination of Racial Discrimination calls upon the state parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands.

In the same way, article 14.2, article 15.2 and 16.1 of the International Labour Organization Convention No.169 has mentioned the. Provision of land ownership and consultation with indigenous community in the case of traditional territory, where they have occupied. In the same document, the article 17.3 specifically concerned about not to encroach indigenous people's right by the others, article 19a and provisioned to provide more lands as well as promote the land of these group of people for their normal existence- The UN draft declaration on the rights of indigenous peoples art 10, 26, 27 clearly provisioned to not to remove them from their territory, have their right to the reinstitution and own, develop, control and use their lands.

Similarly, article 14.2g of Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) has provisioned for equal access of men and women on land and agrarian reforms as well as land settlement schemes along with other benefits such as agricultural credits. The International Covenant on Economic Social and Cultural Rights (CSECR), article 11.2 recognizes the fundamental right of everyone to be free from hunger and it specifically envisaged reforming agrarian systems.

The government of Nepal had ratified most of those obligations and showed its commitment for implementation to improve the state of its people and nation. Therefore, all campaigns on land resources had to be streamlined in the perspective of rights and to be realized the role and responsibilities of state and individuals to realize those rights.

Way forward

Based on above forms of rhetoric and reality in the policy and practices, there is extreme need of realization to have land reforms on the basis of social justice. Certain level of initiatives are emerging in the world by the indigenous community themselves such as mapping of their traditional land ownership and land use practices in Maya Indian Community of Toledo district in Belize. Similarly, some national government also started some initiatives such as the Constitution Act of 1982, Canada, Constitution of Brazil 1988 trying to follow inclusiveness for the indigenous community and women in to the formal land title scheme. Since the issue of land and its association is with production, settlement security, gives an avenue for access to other forms of benefits, raises social status, creates independency, improves bargaining power and challenge oppression, it should be looked from beyond land for production only. In this process, the rights holders whose rights have been systematically denied and violated

since centuries should be organized educate and mobilized to enjoy the land rights and help to establish social harmony and justice in the society.

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