

Indigenous Peoples' Land Tenure Security and Territorial Rights in Nepal




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► **Contents of the Presentation:**

- Indigenous lands and territories: some conceptual clarifications
- Indigenous peoples' experiences
- Current issues relating to lands, territories and natural resources
- International safeguards
- Indigenous claims for planned actions
- Responses of the government in its 15th Plan
- Concluding observations



Context: What is indigenous territories and lands


Archaeology: Neo-lithic era, 10,000- 6000 BCE, some traces of human settlements, beginning of agriculture and domestication of animals in cis-Himalayan regions:

- ▶ Cultivation of plants and domestication of crops and animals started at around 9000 BCE in Indian sub-continent (Babu and Nautiyal 2003)
- ▶ Agriculture widely practiced, villages and small cities developed, feudalism flourished in earlier Aryavarta, west of Ganga-Jamuna confluence and non-Aryan state of Greater Magadha by 500 BCE (Bronkhorst 2007)
- ▶ Megalithic structures and stone pillars, circles, henges, monuments; ancient caves and stone implements, later metal implements reveal that people were living in the cis-Himalayan regions since more than 10,000 years, hunters-gathers turned into agriculturist here by around 6000 BCE.

Context: What is indigenous territories and lands (contd...)

Proto-history/ Pre-history, and Mythological Narratives (oral-aural, inscribed or written):

- A growing body of evidences (**Sumerian** hieroglyphics and other records, **Arabian traders/ travelers'** accounts, **Chinese travelers'** documents, inscriptions and epigraphic records of different parts of **India**, royal chronicler, Hindu **scriptures**, indigenous **mythologies** (memorized and revealed narratives, etc.) that divulge- non-Aryan peoples were the **first peoples** living cis-Himalayan regions, particularly north of Ganges river.
- Two schools of thought regarding agricultural development in cis-Himalayan regions: 1. Agricultural technology and practices diffused from Yellow river civilization (6000- 800 BCE), and from Indus Valley civilization (2500-1500 BCE), and 2. Agriculture developed ingeniously in the indigenous peoples' regions.



Context: What is indigenous territories and lands (contd...)

- ▶ **Indigenous territory** is a geographical area roamed, occupied, inhabited and defended by **hunters and gatherers** (certain band) for subsistence, survival, sharing and entertainment in the hoary past. It gradually developed into a territory with agricultural lands with natural resources, separated by maintain/hill ranges or rivers or stone pillars, and later, permanent settlements and villages appeared as hunters-gathers became **agriculturists** and finally urban areas developed
- ▶ Indigenous territory is **marker** of indigenous identity; **source** of physical, emotional, cultural and spiritual survival, growth and well-being; and **foundation** of indigenism, indigenous nationalism.
- ▶ A **geographical area** judged and chosen as **environmentally suitable, naturally resourceful and culturally adaptable by ancestors** to inhabit permanently for the biological survival and emotional, cognitive, and spiritual growth of their progeny (see Gaenzle 2000:284-304 and many others).

Context: What is indigenous territories and lands (contd...)


Indigenous lands:

- ▶ Land **first occupied, cultivated**, permanently settled, developed and defended by tribal/indigenous peoples.
- ▶ Land delimited, **managed and controlled** by tribal/indigenous peoples
- ▶ Land bestowed by **ancestors** with inheritable, inviolable entitlement
- ▶ Land whose ownership cannot be **transferred, confiscated, or changed** as such land titling is not by decree, but by long-standing customary law and practices
- ▶ Land **fragmentation** can occur by clan fission. **Parcels** of land can be allotted to families for cultivation and care by the concerned collectivity (specially clan)
- ▶ Concerned indigenous group/collectivity is the **sole authority** of the related land, not the **Crown**
- ▶ Land encompasses all forms of natural resources (forests, pastures, flora and fauna, water resources, minerals, etc.) therein.



Indigenous peoples' rights on lands, territories and natural resources

- Initial form of land rights, **prior (pre-state) ownership** rights different from statutory/legal land rights
- Inherent rights, primordial rights, **inviolable** rights
- **Inalienable, non-transferable, imprescriptible** (not subject to prescriptive claims), **inembargable** (cannot be mortgaged) (Plant & Hvalkof 2001:19) and collective rights
- Right of prior ownership of land sometimes created/acknowledged by the **treaties** between state and concerned indigenous peoples.
- Land expropriation exercising the power of **eminent domain** of the state is inhuman and gross violation of human rights- concept- getting redundant
- **Lord of the land/ king** of the country: Western and Indian concepts of absolutist, tax-farming state borrowed by Nepali governments,



Status of indigenous peoples' land tenure security and territorial rights

- ▶ **Cultural legacy: Vedic period** (1000-800 BCE): rhetoric- King the 'protector of the people', reality- '**protector of the priests and the devourer of the people**', producers- Vaishya (farmers), servants/attendants- Shudras, owners/enjoyers/possessors- Brahman and Chhetris. No mention of King as superior owner of the soil, king as supreme landlord modern digest (Hopkins 1998:674, 209). This legacy overwhelmed the state authorities.
- ▶ **Historical legacy: Defeated kings/ chiefs** either murdered or expelled from their countries, their progeny enslaved, property confiscated, land usurped, people brutally subjugated, thus conquest led to gaining lands and resources.



Indigenous peoples' experiences: Land tenure insecurity

- ▶ **Encroachment on customary land rights**, binding registration of lands and non-recognition of customary land title (Caplan 1970, Regmi 1978, Tamang 2008 and many others)
- ▶ Heavy land **taxes**, various forms of associated levies and unpaid forced **labor**, **gradual abolition of collective land ownership** like Kipat system, transition from **collective land ownership to individual ownership** painful (Caplan 1970, Regmi 1978; 2002, Tamang 2008)
- ▶ **Land dispossession/ confiscation/ expropriation/** encroachment and displacement in various ways (Guneratne 2002, Krauskopff 2002, Frederick 1975 and many others, Temang 2008)
- ▶ Promotional measures for **migrant settlers** and rapid **land transfer** and **minoritization** of indigenous peoples (Caplan 1970,; Regmi 1978)
- ▶ **Frequent changes on land ownership/tenure systems** in favor of migrants/settlers, promotion of **feudal systems** (see Regmi 1978)



Indigenous peoples' experiences: Land tenure insecurity

- ▶ **Nationalization of natural resources**, particularly forests, pasture lands, wild animals and birds, water resources, etc. restricting traditional access and ownership
- ▶ **Land reform and cadaster survey** for strengthening feudal order marginalizing indigenous peoples
- ▶ **Ancestral territories deprived, decomposed** and dissolved **and allocated to Hindu high castes** (Karl-Heinz Kramer 2003)
- ▶ **Development projects** and land expropriation, **new settlement projects** and displacement; development of **protected/ conservation areas and national parks** displacing indigenous and local peoples
- ▶ Consequently, by late 1970s, indigenous peoples forfeited almost **two-third of their cultivable land areas** and turned into a marginal land-holders.



Current issues

- ▶ Continued **land alienation, dispossession and encroachment** and **non-recognition of customary/indigenous land rights**
- ▶ Deceptive **boundary demarcations** of indigenous lands to decrease land areas taking advantage of ignorance of indigenous landholders relating to the techniques of boundary demarcation and survey
- ▶ **Increasing displacement** and **homelessness** from recurring natural disaster and development projects
- ▶ Decreased land-holding, **marginal land occupation** leading to **poverty** and **food insecurity**
- ▶ **Clumsy land record keeping** with ample spaces of manipulation



Current issues ... contd.

- Denial of the concerned authorities to **register, survey and provide land title** documents to the concerned indigenous families who are traditionally occupying, using and controlling the lands
- **Barren lands, pasture lands**, wetland, bush/shrub lands, **community lands** under traditional control of indigenous peoples are now partially controlled by govt. agencies, mostly by **fraudsters** with the connivance of corrupt officials and land mafias
- People-unfriendly **natural resource** exploitation and management
- **Destructive, unjust** (home, habitat, heritage, customary infrastructure, spirituality, cultures) **development projects**



International safeguards

Some International instruments:

- ▶ **Indigenous and Tribal Peoples Convention (No. 169), 1989:** Article 13 to Article 19 deal with recognition of indigenous peoples' customary **ownership**, possession, **control** and **use of lands and territories and natural resources** of their spiritual and cultural relationships; **non-removal/non-displacement** from their lands, **relocation** only through their prior, informed consent and adequate compensation; indigenous land **ownership/title inalienable**; **intrusion** upon indigenous lands illegal; support for **agrarian programs** and **development of lands**. The Convention assures indigenous **cultural integrity**, **reduction of inequality** between indigenous peoples and non-indigenous dominant groups, **self-determined development**, among others.

International safeguards (contd..)

- ▶ **United Nations Declaration on the Rights of Indigenous Peoples, 2007:** Article 25 to Article 32 cover wide ranges of provisions concerning the recognition of indigenous peoples' **rights of ownership** on traditionally owned or occupied or otherwise used lands and strengthening their **spiritual relationships** with those lands and territories; appreciation of **customary land tenure**; **restitution** of their lands **previously seized** without their free, prior, informed consent (FPIC), if not possible fair **compensation of land injustices**; freedom to protect/conserv **environment**, to develop their lands and lands' **productive capacity**; and to decide **development priorities** of their lands and territories, among many other provisions.

International safeguards (contd..)

- ▶ **Convention on Biological Diversity, 1992:** Article 8(j) stipulates that contracting parties should respect, preserve and maintain **knowledge, innovations, and practices** of indigenous peoples and local communities... apply indigenous traditional knowledge, innovations and practices with the approval and involvement of the indigenous peoples concerned.
- ▶ **United Nations Framework Convention on Climate Change 1992/93** obligates state parties to respect, *inter alia*, the rights of indigenous peoples.
- ▶ **UN Special Rapporteur** on the Rights of Indigenous Peoples
- ▶ **UN Permanent Forum on Indigenous Issues, 2000.**
- ▶ Treaty-Based UN Bodies like OHCHR, CERD, HRC, CESCR, CEDAW

International safeguards (contd..)

► The 2030 Agenda for Sustainable Development:

- States' unequivocal commitment: eradicate poverty in all its forms, end discrimination and exclusion, and reduce inequalities and vulnerabilities
- 17 Sustainable Development Goals (SDGs) (Goal 14 irrelevant for Nepal as we lack ocean, seas and marine resources)
- 169 targets (7 targets irrelevant for Nepal); balance three dimensions: economic, social and environmental
- 232 Global indicators (10 indicators irrelevant)
- 479 Complementary national indicators
- SDGs pledge: No One Leave Behind
- Imperative: Reach the farthest behind first
- Data gathering, processing and disaggregation by caste/ethnicity, gender, age, location/geographical area, and other relevant attributes mandatory to monitor progress in achieving SDGs.



Current Constitution

- ▶ **Indigenous peoples' rights** as envisaged in international instruments almost completely ignored/denied
- ▶ Right to social justice stated as the **right to inclusion** in state institutions is almost meaningless to serve the spirit of inclusion and is continuously manipulated or misused by political parties
- ▶ **Territorial autonomy** and indigenous **land rights** completely denied (international treaties not respected)
- ▶ Constitution has become an instrument of **perpetual subjugation** of indigenous peoples and other traditionally excluded groups.



15th Plan of the Government (FY 2019/20-2023/24) (land and natural resources...)


Some actions / interventions suggested/ proposed on behalf of the indigenous peoples:

- ▶ **Land and territory:**
- ▶ Recognize indigenous peoples' **ownership and right** to use the land they have been traditionally occupying and using.
- ▶ Conduct scientific **re-survey and mapping** of the lands that are under the traditional ownership and use of indigenous peoples which have not been surveyed and whose ownership was stated otherwise during the cadastral surveys of the past due to various reasons, or those lands which are mentioned as uncultivated or barren or public without identification or recognition of owners in survey field books and distribute **land ownership titles** to the indigenous groups or individuals concerned.
- ▶ Implement special programs for the protection, multiple use and productivity enhancement of **barren and marginal or infertile land** of indigenous peoples.




15th Plan of the Government (FY 2019/20-2023/24) (land and natural resources...)

- ▶ Provide land with priority to those indigenous peoples who have experienced **historical injustices of expropriation of their land ownership** and are now landless or are occupying marginal lands. **Issue ownership titles of lands** to them with urgency.
- ▶ Investigate the acts of **land expropriation or alienation through intimidation, use of force, fraudulent action or deception** in the past, and duly restore land ownership, if restoration is impossible or impracticable, provide fair compensation to victims.
- ▶ Re-examine the **records of land titles** thoroughly and identify and determine public lands, community lands, collective lands and indigenous lands.



15th Plan of the Government (FY 2019/20-2023/24) (land and natural resources...) (contd...)

- ▶ Stop the activities of **displacing or removing indigenous peoples forcibly** from their lands. If the state has justifiable grounds to appropriate the land owned or occupied by indigenous peoples, it shall do so only after obtaining free, prior and informed consent (**FPIC**) of the concerned and provide just and **fair compensation** for the land appropriated and the loss that has occurred due to land dispossession.
- ▶ If the **relocation** of indigenous peoples from their ancestral lands is necessary as an exceptional measure, carry out such acts of relocation only after obtaining free, prior and informed consent of the peoples concerned, and **fair compensation** and **relief** shall be provided for the loss and harm caused and trauma or suffering inflicted. **Relocate** those people back to their traditional lands when the causes of relocation cease to exist.
- ▶ Hold **adequate consultations** with indigenous peoples to seek their consent in the course of formulating policies, laws and plans relating to the **use and management of the lands densely populated by them.**



15th Plan of the Government (FY 2019/20-2023/24) (land and natural resources...) (contd...)

- ▶ Rehabilitate and socio-economically empower of **landless indigenous peoples** like former bonded laborers, herders and domestic workers.
- ▶ Identify, remap and promote management of **ancestral lands and territories** of indigenous peoples.
- ▶ Institute indigenous **autonomous governance structures** in the ancestral territories of indigenous peoples concerned



Natural resources

- ▶ Recognize and protect indigenous peoples' right of traditional **access to natural resources** of their lands and territories. Make them participants in the use, **management and protection of local natural resources**.
- ▶ Acknowledge the traditional ways of life of disappearing **nomadic indigenous peoples** and ensure their access to natural resources of the areas traditionally they roam.
- ▶ Amend laws and develop policies with **meaningful participation** of indigenous peoples for **multipurpose development, benefit-sharing and multidimensional use of water resources**, respecting the spiritual and cultural relationships of indigenous peoples with them.



Natural resources (contd...)

- ▶ Streamline indigenous peoples' journey towards prosperity and happiness by systematizing their **traditional access to the forests and forest resources** of their lands and territories.
- ▶ Increase and ensure indigenous peoples' access to, participation in, and control over the protection, management, and use of all types of **forests, conservation areas, wildlife reserves, wetlands, and other watersheds** as well as of **biodiversity**.
- ▶ Document, register and utilize the **skills, techniques, sociocultural systems and intellectual property** relating to indigenous peoples' forest management, soil erosion prevention and biodiversity improvement.
- ▶ Ensure and fairly manage equitable distribution of access to, and benefits of, **genetic resources** to indigenous peoples;




Agriculture and livestock

- ▶ Improve **access of agriculture-dependent indigenous farmers** to finance, technology and increase **production** of basic food grains and crops of comparative advantage by enhancing their **productive capability**.
- ▶ Increase the **upper ceiling of land ownership holding** of traditional land, community land, cultural land and infertile slope farm land and provide financial, material and technical support to increase the productivity of marginal (infertile) land or to run alternative occupations on such lands.



Agriculture and livestock (contd...)


- Provide all forms of support to **indigenous fisherfolk**, traditionally subsisting on fishing in rivers, ponds or lakes of their territories and who are on the verge of **occupational displacement**, to make them competitive fish farmers/ or **entrepreneurs** by providing them. Extend support to indigenous peoples to promote and commercialize their traditional livestock and related production.
- Review and amend unequal and unjust legal provisions relating to **slaughtering livestock** reared for meat production, selling or buying and marketing of meat products.
- Protect indigenous peoples' right to **food sovereignty and ensure availability** of healthy and nutritious food to indigenous peoples and to the areas at risk of food insecurity and malnutrition.



Government's actions/ interventions in its 15th Plan.

Land Management

- ▶ Ensure the **right on and access to land of landless Dalit, peasants, landless families, tenants and *Guthi*** (a traditional trust) farmers, **unregulated settlers** and other marginalized classes.
- ▶ Conduct **cadastral surveys of the lands** not yet surveyed and bring them under the land administration system and protect them by preparing detailed documents of governmental, public, community and *Guthi* land.
- ▶ Increase **agricultural production and productivity** by formulating and implementing agricultural policies, laws and plans in coordination with and cooperation of federation, provinces and local levels and **stakeholders** concerned.

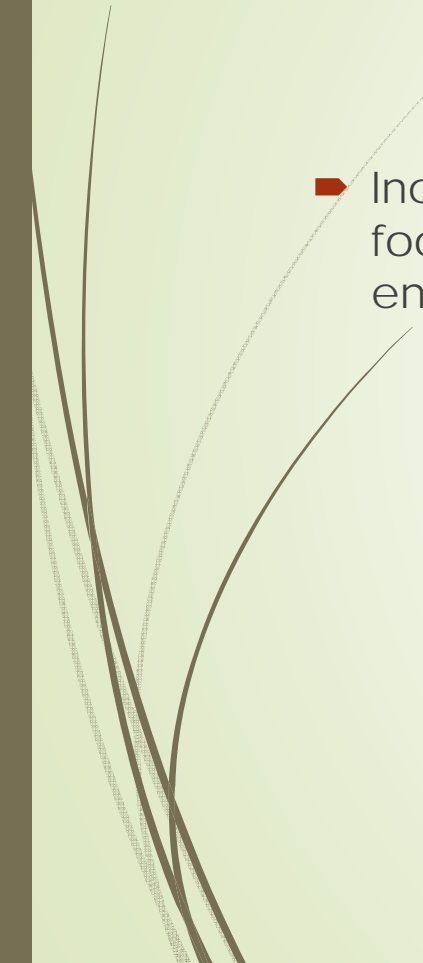


Government's actions/ interventions in its 15th Plan. (contd...)

- Identify **crop, livestock and fishery pocket areas** on the basis of feasibility considering one ward of one local level as one development unit and provide production materials, equipment and services to farmers through the one-door system from the local level (body).
- Promote **agricultural forest with high value crops of multiple use** according to the principles of worthy use for the protection and productivity growth of **barren and marginal lands**, especially of hills and slopes.
- Increase **crop (cereal, fruit, vegetable) production** and expand and promote **livestock** rearing and marketization/ commercialization to meet the need of food and meat.



Food security and nutrition

- Increase food availability for **marginalized families and households** facing food insecurity by involving them in groups and cooperatives and encouraging them to start collective farming.
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Forest, Biodiversity and Watershed

- ▶ Prepare an **integrated management plan** for protected areas and a strategic plan for the protection of arc landscape areas and pasture lands and implement the plan with the participation of **women, Dalits, indigenous peoples** and local communities.
- ▶ Formulate a **sustainable forest management plan** for the protection of government-managed forests, community forests, partnership forests, leasehold forests, and **forests under all other management systems, pasture lands**, wetlands and biodiversity and implement the action plan for the protection of endogenous and endangered species.
- ▶ Revise and redesign a **gender and social inclusion strategy** in the forestry sector, including in community forests and other forest management systems as per the need of the time and execute accordingly.



Forest, Biodiversity and Watershed (contd...)

- ▶ Document and register all **local-level biodiversity-related knowledge**, skills, practices, sociocultural systems, arts, intellectual property of **indigenous and tribal peoples** and local communities.
- ▶ Formulate laws and create mechanisms and bring them into operation for **equal access to genetic resources** and **equitable distribution** of their benefits therefrom.
- ▶ Utilize forest resources for prosperity, promote **nature-based tourism** and implement **REDD Plus and Climate Adaptation Program**.



Some concluding observations

- ▶ Manifestations in the forms of **poverty, deprivation, exclusion and denial of rights** of indigenous peoples cannot be eliminated until the **root causes and underlying causes** are not properly identified and addressed.
- ▶ **Land ownership** or tenure security is the most sensitive issues for indigenous peoples worsened by **ruling elite prejudices**, inheritance of feudal culture, legal complications and corrupt administrative practices.
- ▶ **Land injustices** are still continuing because of widespread **immunity of perpetrators** of past land injustices and increasing influences of land mafia. **Equity concerns** and social differentiations relating to indigenous lands are of paramount importance for social harmony.
- ▶ A **diachronic and synchronic study** should be carried out on the processes and consequences of transition of collective land tenure/ownership (customary titling) into individual forms of land tenure/ownership (title by degree) and parceling of lands.



Some concluding observations (contd...)

- ▶ **Restoration of traditional collective ownership** on natural resources has become almost impossible, as the day that local indigenous groups used to provide certain patch of forest (Rani Ban, Daskhate Ban) to the government for their use has gone now due to **nationalization**, but still their **access to natural resources** can be managed to improve their quality of life.
- ▶ Progress, prosperity and well-being of the peoples depend on the **full compliance of the government with the international treaties** (Conventions, Covenants, Declarations, etc.) and fulfilling its obligations timely.
- ▶ It is pervasively felt today that **right-based approach** should be adopted in course of implementing, *inter alia*, land reform and management programs; natural resource and infrastructure development projects; economic and social development programs environmental protection policies and measures; territorial development plans.



Some concluding observations (contd...)

- ▶ **Recognition of indigenous peoples' rights on lands and territories and embracing of FPIC** has several positive impacts evidenced in the reduction of tropical deforestation, increase in income, better managing diversity, increased responsibility for the next generation, enhanced social solidarity as seen in Mexico, Latin American countries, tribal areas of India and elsewhere. It is time to apply **lessons learned** from within and abroad.
- ▶ Revitalization of **relationship with ancestral territory** is crucial for fostering genuine nationalism, national integrity and sovereignty.



Thank you

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