



The Right to Practise Shifting Cultivation in Nepal

Lessons from ILO Conventions Nos. 111 and 169

For many indigenous people in Nepal, shifting cultivation is a major source of livelihood and a long-established traditional occupation. However, these people are among the most marginalised in the country, in part because of negative perceptions and persistent policies against shifting cultivation. The ILO Conventions No. 111 on Employment and Occupation and No. 169 on Indigenous and Tribal Peoples can be used as tools to combat such kinds of discrimination, as both of these international legal instruments have been ratified by Nepal.

The main concern of shifting cultivators is lack of land tenure and access to other natural resources. Their access to lands and forests traditionally used or occupied by them has diminished drastically over time, with exclusionary policies on land, forestry, and nature conservation. While the community and leasehold forestry programmes may have been broadly successful, they are insensitive to and often in conflict with shifting cultivators' rights and needs.

Shifting cultivation should be recognised as a legitimate land use. Its practitioners should receive government support at par with other farmers, and agriculture and forestry extension should be sensitive to its specific requirements.

Introduction

Khoria kheti or bhasme (shifting cultivation) is the dominant land use practice in parts of more than 20 hill districts of Nepal; it is typically practised on the most inaccessible and steep lands and it is the traditional farming system of several indigenous peoples, including Chepang, Magar, Sherpa, Rai, Limbu, Tamang and Gurung. These groups have been practising shifting cultivation for generations, adapting it to local conditions and changing circumstances. Studies indicate that this form of farming is both appropriate and sustainable on the type of lands where it is traditionally practised, as long as the forest follows are respected as an integral part of the farming cycle. Nepal has ratified two Conventions of the International Labour Organisation that concern the rights of indigenous shifting cultivators: No. 111 (Discrimination in Employment and Occupation), ratified in 1974, and No. 169 (Indigenous and Tribal Peoples), ratified in 2007. The aim of the study presented here was to see how the provisions of these conventions can be applied to protect the right to practise shifting cultivation. Two cases were analysed: one Sankhwasabha district, where shifting cultivation is most commonly practised by the Sherpa, Rai and Shingsa indigenous nationalities; the other on the Chepang indigenous nationality, who practise shifting cultivation mainly in Dhading, Gorkha, Chitwan and Makwanpur districts.

Major results

The main issues as per the study are: the right to practice shifting cultivation, rights and control over natural resources, impact of land tenure on poverty alleviation, and access to services and facilities.

The right to practise shifting cultivation

The right to practise shifting cultivation (like the right to belong to an indigenous people) is based on the principle that people should be allowed to practise shifting cultivation if they wish to do so. Convention No. 111 provides for the right to practise a traditional occupation and the right to freely choose an occupation. Convention No. 169 provides for the right to shifting cultivation, acknowledging it as part of the culture that identifies the indigenous peoples who practise it, and that they have the right to 'maintain' and celebrate that culture. In fact, the agriculture-culture link works both ways: traditional culture (incl. knowledge, practices and beliefs) makes the people who are indigenous to an area much better at farming there. In turn the benefits from that agriculture enrich their culture, be it with food products, a home for their ancestors and spirits, and/or by supporting the necessary social fabric.

"Indigenous shifting cultivators have a vast store of local knowledge about their particular landscape and how best to use it for survival, and have much to teach the world about the efficient use of their landscape for combined agriculture and forestry."

Debating shifting cultivation in the eastern Himalayas (ICIMOD 2006)

Right to land tenure security

Communities who practise shifting cultivation claim that lack of land tenure is the main reason for their poverty, as it deprives them of their principal means of production. Government and public opinion see shifting cultivators as encroachers on government land, who burn and destroy government forests. However, another perspective is that the land belonged to these communities' in the first place, but their land claims were never recognised and their customary tenure arrangements never understood. As a result, much of their traditional land was turned into government forest, leaving them to make do with a much smaller area for their livelihood needs. Local power struggles and corruption facilitated the privatisation of common property land, causing some people to secure large areas of land, while others were left with nothing. There is no recognition of the fact that in shifting cultivation the 'forest' phase (forest fallows) is an integral part of an agricultural rotation system that includes clearance and planting of crops.

The community and leasehold forestry programmes claim to return 'government forests' back to the communities, but the use of this category of forest land for agriculture is not permitted. Furthermore, while leasehold forestry and community forestry programmes have succeeded in granting forest rights to forest user groups, traditional power structures at the community level have remained in place, with the result that many of the most disadvantaged users have not benefited. Instead, such programmes have served to transfer rights and access to forest land out the hands of indigenous communities and into the hands of more dominant groups. The government's lack of recognition of indigenous peoples' traditional occupations and land use systems, such as shifting cultivation, is one of the main causes of this disenfranchisement of traditional users of the land.

ILO Convention 111 recognises the right to land as a resource needed for this occupation. This means the land currently under crops, as well as land under fallow which will be cropped in due course. The ILO Convention 169 under article 14.1 states that the rights of ownership and possession of the lands which indigenous peoples traditionally occupy shall be recognised.

The shifting cultivators have used these same lands for centuries. Many have left the practice for other less labour



intensive occupations. Those farmers who still practise shifting cultivation should not have to live in constant fear of eviction which forces them to opt for short-term benefits rather than long-term planning and development. In Nepal, as in other countries, successive governments have attempted to move these communities to less marginal land; essentially displacing them from their traditional habitat. Experience shows, however, that if they want to remain farmers, they are better off remaining on their traditional lands, because they know it and have adapted to it over the generations.

“Problems related to shifting cultivation are found to be often as much a result of counterproductive policies as of inappropriate land use practices. Therefore, there is a need across the region for new, more effective and socially more acceptable policy options that help to improve shifting cultivation, rather than replace it.”

Debating shifting cultivation in the eastern Himalayas (ICIMOD 2006)

Rights to natural resources

Traditional shifting cultivators require and maintain a wide range of natural resources as part of their farming system, including the soils on the steep slopes they cultivate; the wide range of crops they grow; the wild foods they collect; the animals they hunt; and the forests they maintain in the fallows. Shifting cultivators need security of tenure and access to these resources and should be allowed to use them in the traditional way, with modifications where necessary. Furthermore, the government should support shifting cultivators to maintain these resources and use them productively, in the same way they support other farmers. Denying or hampering their access and support is discriminatory under Convention No. 111, as it results in their inability to practise their traditional occupation.

Access to services and facilities

Both Conventions (Nos. 111 and 169) state that it is the government's obligation to provide shifting cultivators with the services and facilities they need for their occupation, to an extent that is equitable with what other farmers receive. However, access to basic services like health, education, drinking water, markets, and technology is found to be very limited – more so in shifting cultivation communities than elsewhere. Government service centres are relatively far away and ill-staffed, and their services are not adapted to shifting cultivators' needs. Specific gaps are also found in the provision of citizenship certificates, especially in the case of the Chepang, and in the provision of social security, such as access to credit and protection from debt servitude.

Shifting cultivation (rotational agroforestry)

'Shifting cultivation' refers in this article to the agricultural practice in which indigenous communities clear plots of secondary forest to cultivate crops, after which vegetation regenerates naturally in a fallow phase. The land clearing technique ('slash and burn') is an integral part of the rotational cycle and makes nutrients and space available for growing crops. The crop growing phase lasts for 1-2 years; the 'forest fallow' phase for up to 12 years or even more. The fallow 'forests' provide other essential items for the farmers like firewood, timber, wild foods and medicines. The practice is better described as rotational agroforestry. It can be one of the most effective and sustainable ways of producing food in areas with steep slopes and a subtropical monsoon climate with heavy rainfall.

Summary and recommendations

Shifting cultivators from indigenous nationalities have the right to practise shifting cultivation and to government support to help make it productive and remunerative. This right is enshrined in the ILO Conventions Nos. 111 and 169 for those indigenous farmers who wish to practise this traditional occupation. Many farmers do wish to maintain shifting cultivation, despite adverse government policies, because it is the only viable way of farming on the steep slopes they inhabit, and may also form an integral part of their cultural identity. However, most policies and government programmes in Nepal are unsupportive of shifting cultivation and as such the government fails to comply with the ILO Conventions. Based on the study, the following recommendations are proposed:

- **Formally recognise shifting cultivation and accept that banning and discouraging this age-old and well integrated farming system is counter-productive in terms of development, food security and environmental conservation**

Government officials, researchers, and development professionals are encouraged to acknowledge the existence of shifting cultivation in Nepal and stop seeing it as a sign of underdevelopment or 'backwardness'. Rather, it should be formally recognised as a legitimate land-use method, in the same way as khet (irrigated terraces), and bari (rain-fed terraces) cultivation are recognised, as are various types of forestry.

- **Recognise indigenous peoples' rights to the land and natural resources required for shifting cultivation, including collective rights**

Securing tenure of land and resources and securing access to shared resources are required most urgently. Indigenous people who practise shifting cultivation tend to depend on a much more diverse range of resources than permanent and non-indigenous farmers, all of which have to be provided for.

- Stop discrimination against shifting cultivators in employment by providing appropriate and adequate education, skills development, and equitable employment opportunities, and stop discrimination on the basis of gender, race, poverty, or occupation

Shifting cultivators should be empowered through formal education, non formal education and awareness raising that are appropriate to their needs, in order to enable them to negotiate fair deals with employers, businessmen, government officials and others, and to solve the problem of perpetual indebtedness and debt servitude. Awareness should be raised among policy makers and the general public on how to see things from the perspective of people with a different culture than the mainstream. In all Nepali schools and colleges, a more appreciative attitude should be created towards other cultures and ways of life.

- Provide for appropriate extension services which are supported by appreciative and unbiased research aimed at improving shifting cultivation, rather than controlling it

Extension efforts that are aimed at controlling and discouraging shifting cultivation should be stopped. The community and leasehold forestry programmes in particular should take the needs of shifting cultivators into account. These should not be forced on farmers nor applied on existing fallow lands.

Research and development efforts should focus on identifying, strengthening and scaling up indigenous good practices and innovations, and help to provide appropriate agricultural and forestry extension services and training for shifting cultivators. It should further help to develop market linkages for local niche products, and ensure that farmers get a fair share of income and other benefits from their produce and resources.

- Strengthen indigenous shifting cultivators' role in decision-making regarding their development and resources through participation and consultation

The customary institutions (i.e. organisations, practices and knowledge, and customs and traditions) that are part of the shifting cultivation farming system should be formally recognised and strengthened; especially the ones that play an important role in shifting cultivators' cultural identity and those that promote the sustainable management of natural resources.

- Progressively implement ILO Conventions Nos. 111 and 169, and raise awareness on the applicability of these to protect the rights of shifting cultivators and practitioners of other traditional occupations.

This includes bringing national legislation and policy on indigenous peoples in line with the provisions of Conventions Nos. 111 and 169 – including for shifting cultivators. The ILO conventions should increasingly be used as instruments to advocate rights related to practising shifting cultivation and other traditional occupations.

Related publications

This paper presents the main findings of the study

Aryal, KP; Kerkhoff, EE (2007) *The right to practice shifting cultivation as a traditional occupation in Nepal: A case study to apply ILO Conventions Nos. 111 (Employment and Occupation) and 169 (Indigenous and Tribal Peoples)*. Kathmandu: ILO Nepal.

Interested readers can download the report from www.pro169.org, or request a hard copy from ILO Nepal from sita@ilo.org (Tel: 00977-1) 5555777, ext. 115

Other related publications

Cha, JM (2007) *Increasing access to environmental justice: A resource book for advocacy and legal literacy in South Asia*. Kathmandu: ICIMOD

Kerkhoff, E; Sharma, E (comp) (2006) *Debating shifting cultivation in the eastern Himalaya: Farmers' innovations as lessons for policy*. Kathmandu: ICIMOD

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