

Introduction

The National Human Rights Commission, established as an independent statutory body in 2000, has been elevated to a powerful constitutional body with a commensurate mandate, competence and independence. The Commission is fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and has been accredited with “A” status by the Global Alliance of National Human Rights Institutions. The Commission is mandated to ensure the respect, promotion and protection of human rights, is competent to launch inquiries and investigations into alleged human rights violations, and can recommend legal or departmental action against human rights violators. It monitors the overall human rights situation in the country and can recommend remedial measures if so required.

Functions of the NHRCN

The Commission has a broad mandate including civil and political rights, economic, social and cultural rights, and rights of the other groups. Article 249 of the Constitution of Nepal, 2015 lays down that the Commission shall perform the following functions, namely:

- To respect, protect and promote human rights and ensure effective enforcement thereof.
- Inquire on its own initiative or on petition or complaint lodged in or sent to the Commission and investigate complaints about the violations of human rights of an individual or group or abetment thereof, and make recommendation for action against the perpetrators.
- Recommend to the concerned authority to take departmental action against any official, who fails to fulfill or perform his or her responsibility or duty or shows reluctance in preventing violations of human rights.
- Recommend to file a case in the court in accordance with law against any person or organization who has violated human rights.
- Coordinate and collaborate with the civil society in order to enhance awareness on human rights.
- Carry out periodic reviews of the relevant laws relating to human rights and make recommendation to the

Government of Nepal for necessary improvements and amendments to such laws.

- Recommend Government of Nepal for the implementation of any international treaty or agreement on human rights, to which Nepal is a party.
- Publish, in accordance with law, the names of the officials, persons or bodies who have failed to observe or implement any recommendations or directives made or given by the Commission in relation to the violations of human rights, and record them as violators of human rights.

Definition of peasants: rights holders¹

A peasant is a man or woman of the land, who has a direct and special relationship with the land and nature through the production of food and/or other agricultural products. Peasants work the land themselves; rely above all on family labor and other small-scale forms of organizing labor. Peasants are traditionally embedded in their local communities and they take care of local landscapes and of agro-ecological systems.

The term peasant can apply to any person engaged in agriculture, cattle-raising, pastoralism, and handicrafts-related to agriculture or a related occupation in a rural area. This includes Indigenous people working on the land.

The term peasant also applies to landless. According to the UN Food and Agriculture Organization (FAO 1984) definition, the following categories of people are considered to be landless and are likely to face difficulties in ensuring their livelihood:

- a. Agricultural labor households with little or no land;
- b. Non-agricultural households in rural areas, with little or no land, whose members are engaged in various activities such as fishing, making crafts for the local market, or providing services;
- c. Other rural households of pastoralists, nomads, peasants practicing shifting cultivation, hunters and gatherers, and people with similar livelihoods.

Peasants and their rights²

¹ Declaration of Rights of Peasants - Women and Men La Via Campesina: International Peasant Movement
² Declaration of Rights of Peasants - Women and Men La Via Campesina:

At the global level, there are currently some 1.2 billion peasants and together with their families they represent one third of humanity. In absolute terms, there are more peasants today than ever before in history. Peasants are victims of multiple forms of discrimination and human rights violations. 80% of the world’s people who suffer from hunger and poverty in the world live and work in rural areas, 50% are small-scale and traditional farm holders, 20% are landless and 10% subsist through fishing, hunting and herding activities.³

Peasants are the primary victims of violations of the rights to food, water and sanitation or adequate housing. Evicted from their lands and repressed when they defend their rights, peasants are also amongst the primary victims of civil and political rights violations.

But peasants are key to food sovereignty and the realization of the right to food, in particular in developing countries where they provide up to 80% of the food consumed at the local level. Peasants offer a sustainable alternative to the dominant agro-industrial model and they play a crucial role in the fight against climate change and the conservation of biodiversity. Humanity as a whole would thus only benefit from a better protection of the rights of peasants. The need to better support peasants and protect their rights is more and more recognized at the international level.

Nepalese perspective on Peasants' rights

Few of the affirmative provisions with regard to the right of the peasants have seen in the articles of the international legal provisions, the dispersed national legal provisions and verdicts given by the Supreme Court, recommendations of the National Human Rights Commission and National Commission on Farmers, performing tasks by the Nepal Government or the commitments made by the political parties to some extent. The existing rights have been seemingly enjoying by the peasants as other people enjoy are the right to dignified life, freedom to form unions and associations, equal protection of law, right to use property on the basis of law, obtaining information, freedom from performing undesired duty and including other rights. Except these provisions, right to participation on the basis of proportional representation of peasants in the state agency have been ensured as fundamental

International Peasant Movement
³ <https://www.cetim.ch/a-un-declaration-on-the-rights-of-peasants/>

rights by the Constitution of Nepal. The Constitution made positive effort providing the right to have access to lands for agro activities, select and protect local seeds and agro species which have been used and pursued traditionally as fundamental rights. Similar is the situation of the various rights provided by the international legal instruments in which Nepal is a party. But, to create the situation of enjoying these all provisions and for the real implementation the state has to formulate the integrated laws related to the rights of the peasants. Similarly, domestication of the international legal provisions has seemed to be necessary.

Policy comments

Even the United Nations realizing the need to protect the rights of the peasants and the rural people initiated an effort to form the permanent mechanism, to respect the rights of the peasants to live dignified lives the state should end the situation of deprivation from nutrition and health services. Social insurances provision should be provisioned under peasants' social security as their right. To accomplish this, as mentioned in the proviso of the Article 18 (3) of the Constitution of Nepal, special law for the protection, empowerment or development of the farmers is necessary to formulate. It is also necessary to formulate separate laws for the implementation of farmers rights as provisioned in the article 42 (4) as fundamental rights. In totality, in accordance with article 25 (2) of the Constitution the State in circumstances requisite, acquire, or otherwise create any encumbrance on property of a person, new law should include the provision of alternative land management. The same condition is necessary for the implementation of the policy pursued by the Constitution with regard to the peasants’ rights. In conclusion, for ensuring easy enjoyment of the rights by the peasants, to manage the clear legal provisions of ensuring the enjoyment of their rights from the local, provincial and federal levels may be appropriate.

The Constitution has esteemed the peasants’ rights as fundamental rights. The Constitution has also ensured that health, education, housing, right to food, food sovereignty, food security or right to live a humane and dignified life as well as the right to have access to lands for agro activities, select and protect local seeds and agro species and protection of traditional knowledge and taking benefits from this are also ensured as fundamental rights.

In the directive principles and the state policy which are related to the constitutionally guaranteed fundamental rights also specially prioritized the development of agricultural sector, and the poverty alleviation. The State has also accepted its obligation to respect, protect and fulfill by freeing from hunger and right to adequate food under the International Covenant on Economic, Social and Cultural Rights, 1966 including other human rights related treaties and agreements. Economic, Social and Cultural Rights Committee (ESCR Committee) has also pointed out for the development of agricultural sector and improvement for fulfilling this obligation. Supreme Court of Nepal basing on the Constitution and the international human rights laws has been making the state accountable by interpreting the provisions to fulfill the constitutional and international human rights laws’ obligation with regard to the right to the peasants. National Human Right Commission has also initiated some function realizing its accountability. The government has been conducting different activities pursuing the welfare approach rather than the right based approach. In conclusion, the political leaders have also affirmative concern towards the right of the peasants.

Nepalese efforts

For the benefit of the poor and the landless peasants few of useful legal provisions are existed. But these provisions don’t seem to be sufficient in the context of fulfilling the present constitutional rights. These rights don’t seem enforced in practice because they are inspired from welfare perspective. There seems to be the lack of solid mechanism or regulating body for making the concerned agency accountable, in case of violation of the rights or the claims of the citizens. Though the policies, planning and the activities for agricultural development or promotion of peasants’ identification and respect have been implemented, translating them into law and the creating the favorable environment of implementing them in practice responsibly by the state is still left. On the one hand, the situation of insufficiency of laws is the major problem in the context of protecting the rights of the peasants, but on the other hand, the farmers are not getting sufficient benefits due not to showing concern for integrating the existed legal provisions for implementing them for the welfare of the peasants. Some of judicial decisions have not been implemented and the mandate of National Human Rights Commission seems to be utilizing

significantly for the welfare of peasants. Though some of the parliamentary watchdog efforts have been made for the protection of peasants' rights, the governmental agencies have not showing concerns towards executing the parliamentary committees' recommendations.

In such a circumstance, it is being delayed for the enhancement of the life standard of the peasants' protecting and promoting the constitutional guarantee and the legal obligations incurred by the international laws addressing the lack of laws for adequate practical implementation undertaking sustainable development of agricultural sector. For creating the situation to live a respectful life by the all citizens involved in agricultural sector, the amendment of the existing laws and additionally the new laws should necessarily be formulated to address the vacuum of the laws related with the issues like respect and identification of peasants, right to food and food sovereignty, right to have access to lands for agro activities, and protection of traditional knowledge, access to the natural resources, value to the public ownership, right to compensation and penalty, irrigation facility and access to the agricultural infrastructures, protection of the agricultural labors, protection from the forced displacement including others. Whether on behalf of the state efforts have been made or not to create the enabling environment to ensure the enjoyment of economic, social rights for the underprivileged peasants, small peasants and the people in the poverty line but the role of the National Human Rights Commission, National Peasants Commission and the Parliamentary Committee should seem to be promoted to make the government accountable after monitoring the impacts from the activities of private sectors and national, international business community.

By showing the necessity of enactment of new laws, the State cannot escape from the implementation of the existing laws. That's why; it is also necessary to implement the interpreted legal provisions effectively for improving the conditions of the peasants. With regard to this, the following solid conclusion and recommendations have made: -

NHRCN suggestions/recommendations

On the basis of aforementioned conclusion, law formulation with regard to the rights to the farmers, the provisions made in the articles 25, 36, 42, 44, 51 and

290 for the government of Nepal, Provincial government and the local level executive and the federal legislature, provincial legislature, and the local level legislature, the directives by the Supreme Court of Nepal, showing concern towards the recommendations made by the National Human Rights Commission and especially the suggestions made by the UN mechanisms, to recommend the followings would be appropriate for drafting highly prioritizing the integrated new law related to the rights of the peasants with high priority including the following issues:

1. To ensure the identification and respect of the peasants in the laws being formulated.
2. To manage increase of agricultural production by the optimum utilization of governmental and public lands by the landless and squatter peasants.
3. To ensure self-reliance of the peasants producing foods by themselves, ensure storage and production of food items produced by the farmers, production for food security of the citizens, management of market and managing food security for the easy access to the peasants including all the citizens.
4. To make an effect the rights of the peasants' access to the land, the right to have access to lands for agro activities, select and protect local seeds and agro species which have been used and pursued traditionally.
5. To manage the appropriate price and the access to the market for the agricultural products of the peasants implementing the scientific land reform to increase the production and production capacity, protection and promotion of peasants' rights and welfare, increasing the production and production capacity.
6. Not to keep the fertile land barren, guarantee the right to food sovereignty, ensure access to and control over the required land to the farmers who wants to participate in the production of agricultural products.
7. To manage the rights of the Kamaiya (bonded labour), Haliya (agricultural bonded labour), Haruwa (ploughman), Charuwa (cattle herder), registered or unregistered tenant (*Mohi*)⁴ and the ownership

⁴ A person who has been cultivating a land that belongs to any landowner.

on the agricultural producer and to protect the traditional technology, knowledge, and the skills of the peasants.

8. To manage the right over agricultural technology, instruments and the information, right to participation in the policy level decision making, protection of the intellectual property rights.
9. To manage provisions including the right to crops and crop species, right over traditional knowledge, right to get compensation of loss due to the use of protected species, specific privilege to agricultural cooperative organizations in comparison to the other financial cooperatives, special facility to the peasants providing the peasants' identity cards to all the peasants.
10. To manage easy and facilitating production, processing, packaging and levelling in accordance with the international standards identifying proper place of production of the exporting crops and agricultural products.
11. To ensure the market of livestock product produced by the farmers, emergency veterinary service, and to include the easy procedure of worldwide export to the livestock products produced by the Nepalese farmers.
12. To review identifying those laws that some of the existing provisions of the Constitution and the laws have adverse effects for the welfare of the poor people and the peasants directly or indirectly.
13. To pursue and cause to pursue the effective measures for the effective implementation of the laws as the existing laws related to the welfare of the peasants are required their improvements for the effective implementation.
14. To make the all levels of the government accountable and to make the role of National Peasants' Commission effective in the federal context for the protection of the rights and welfare of the peasants in accordance with the Constitution and international obligation.
15. To ensure the informed and meaningful participation of the farmers in the policy improvement efforts including the law drafting process.



Reinforcing Peasants' Rights: NHRCN Recommendations



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