Distribution and Retention of Khas Land in Bangladesh

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Prepared for
Association for Land Reform and Development (ALRD)

April 2000
EXECUTIVE SUMMARY

Background and Objectives

Land-peon-wealth are interrelated and interdependent categories. Land is the mother of wealth and labour of the peasants is her father. Land and peasantry together form the basis of reproductive civilization, and foundation for krishi agriculture and krishti-culture. Land is scarce and, therefore, establishing ownership right over land was always highly competitive, in which violence, speculation and other deceptive means were common. Land forms the basis of our social, economic and political power structures. That is why the 'noise' about Land Reform has always been much pronounced in this part of the world. Our contemporary history of land reform is essentially the history of acquisition and distribution of Khas Land. This is the most unresolved issue of Agrarian Reform. There was no dearth of prescription from the side of states and governments in the past fifty years (since the promulgation of East Bengal State Acquisition and Tenancy Act 1950) that "intermediaries shall be wiped-out, and all land shall belong to the real cultivators as owners". This has never been materialized. To the contrary, a vested interest group representing the power structure comprising of local influentials, dishonest politicians, government officials and emerging "bourgeoisie" have managed to occupy almost all the khas lands (agricultural, non-agricultural, and waterbodies), illegally. From peoples' point of view, the issue of khas land is so much so neglected and non-transparent that no one even knows what is the amount of khas land available in Bangladesh. No comprehensive research work has so far been undertaken to assess the impact of distribution of the khas land on the poor, and the whole range of problems associated with the retention and non-retention of khas land by the poor including the role of the power matrix (agents of power structure) in the process of alienating the poor from their inherent rights to own the khas land. The present study purports to fill-in our knowledge gaps about the above important issues so far untouched in the literature.

Methodology

The present study followed an exploratory research design in which both primary and secondary data were obtained using qualitative and quantitative data collection instruments. Secondary sources were explored mainly for two purposes: office records to estimate the amount of khas land (by types and geographical locations) available in Bangladesh, and legal documents (from Bengal Regulation XI 1825 to Agricultural Khas Land Management and Settlement Policy 1997) to analyze the evolution of relevant laws and enactments during the last about two centuries. Primary data were obtained in compliance with the specific objectives of the study from six thanas: four sample thanas, namely Deblata, Hatiya, Gaibandha and Shailkupa were selected for the sample survey (200 samples with 50 from each thana, randomly drawn) with the beneficiaries of khas land, and for conducting sixteen case studies (4 from each thana) with those beneficiaries of khas land who subsequently were unable to retain control over the khas land; two sample thanas, namely Santhia and Ranisankail were selected to study ‘best practices’ of organized efforts of peasantry reflecting "success stories of struggle for khas land" (Samata and Ranisankail).

Major Findings

The major findings emerged from our analyses having policy, strategy and programmatic implications are as follows:
Evolution of legal and operational aspects of khas land

- The major elements in the evolution of the laws on khas land can be traced in the following instruments: Bengal Regulation XI 1825, Bengal Alluvion Act 1868, Government Estates Manual 1919, Bengal Crown Estates Manual 1932, East Bengal Acquisition and Tenancy Act 1950, The Bangladesh State Acquisition and Tenancy (Fourth Amendment) Order 1972 (PO 135), Bangladesh Landholding Limitation Order 1972 (PO 98), President's Order LXI 1975, Land Reform Action Programme 1987, Agriculture Khas Land Management and Settlement Policy 1997. In addition, many circulars and memos were issued by competent authorities, many of which are contradictory by nature.

- The evolution of the land related Laws gives an impression that things were made difficult-to-understand, consciously, reasons for which are best known to the colonial and para-colonial law makers.

- So far, agricultural khas land is concerned, the East Bengal State Acquisition and Tenancy Act 1950 was the mainframe legal document which was promulgated to abolish the Zemindari System (Permanent Settlement of 1793). This law was the basis for all subsequent laws on khas land which declared that "So far as agricultural lands .... are concerned, they shall be held by one class of people to be known as maliks or raiyats which means that those shall be no intermediary between the State at the top and malik or raiyats to be regarded as the tillers of the soil at the bottom".

- The ownership ceiling of agricultural land per family was changed many a times: 33.3 acres (100 bighas) in 1950, then raised to 125 acres (375 bighas) in 1961 by Ayub Khan, then in 1972 it was again brought down to (1950's level) 33.3 acres (100 bighas), and then the Land Reform Commission of 1982 suggested a ceiling of 20 acres (60 bighas).

- The amount of khas land due to the fixation of ceiling was always much below the expected amount. Using the loopholes in the relevant laws the large landowners managed to retain their land ownership. Also, the khas agricultural land available with the government was of inferior quality.

- The laws and procedures pertaining to the identification of khas land did not change much since 1950.

- There has been changes in the definitions of beneficiary families and "landless", as well as families who will get priority in receiving the agricultural khas land.

- The possible active role of the civil society including the peasants' organizations, NGOs and other organizations have never been seriously recognized in the government policies.

- The settlement of disputes always go in favour of the powerful - the illegal occupants. The legal flaw, among others, lies in the fact that the provision for settlement at the local level does not work; and the provision for settlement at the higher levels (district, division, even upto the High Court) is non-affordable by the landless poor.
• Although there is a provision in the law to form cooperatives on large compact blocks of *khas* land, this did not work in the past, for varied reasons. The main reason being illegal occupation of large blocks by influentials.

• The Land Reform Policy of 1987 itself recognizes that "The Ministry feels that it may be very difficult for the destitute landless in this society surrounded by the selfish land-grabbers to retain the land given under settlement". But what is the effective legal measure to resolve this?

**Amount of *khas* land: Official record-based analysis**

• The estimated amount of total *identified* *khas* land in Bangladesh is **3.3 million acres** with 0.8 million acres of agricultural *khas* land, 1.7 million acres of nonagricultural *khas* land, and 0.8 million acres of *khas* waterbodies.

• The above amount of *khas* suffers from underestimation. The actual amount of *khas* land should be higher than 3.3 million acres. This is attributable to the fact that a part of the land (agricultural, non-agricultural) and waterbodies which should be *khas* is still **not identified** in the official record (extent of which is unknown). The reasons are attributable to the problems in official land record system, and dispute between government and "so called" owner.

• The amount of *khas* land and water bodies available in the country varies by divisions ranging between 46.3 percent in Chittagong and only 4.5 percent in Khulna.

• In terms of availability of agricultural *khas* land, Dhaka division has the maximum share - 26 percent and Khulna - the least (6.4%).

• Serious mismatch is evident in the official statistics of open water bodies: a total of about 2.3 million acres of water bodies is "missing". Similarly, about 71,000 acres of agricultural *khas* land is also "missing".

• Availability of *khas* land (agricultural and non-agricultural) varies by administrative districts. In terms of agricultural *khas* land, the highest share belongs to Sunamgonj district (about 10% of country total) and the lowest to Narshingdi (0.08 % of country total). The highest share of non-agricultural *khas* land belongs to Rangamati (32% of the country total and the lowest with 0.01 percent to atleast 12 districts (with nil for two districts).

**Distribution of *khas* land: Official record-based analysis**

• Regarding distribution of *khas* land, the official records (again unpublished) provide status on agricultural *khas* land only, which constitute one-fourth of the total identified *khas* land.

• Official source claims that about 44 percent of the 803,308 acres of (identified) agricultural *khas* land has already been distributed among the poor, landless and destitutes. The validity of this distribution statistics is questionable on three counts:

1. There exists a distinct gap between the official declaration and reality: not 44 percent of the agricultural *khas* land (official figure), but at best 26 percent of the same has been distributed (i.e.; the official distribution figure is 40% exaggerated). The rest are illegally occupied by rich and powerful people in the society.
2. Of the amount distributed so far, about 56 percent could not be retained by the poor people, which are engulfed by the local influentials inconnivance with the agents of the power structure.

3. As a result of combined effect of the above two estimates, it can be concluded that only 11.5 percent of the agricultural khas land has been effectively owned by those for whom the land is meant for -- the landless and poor, and 88.5 percent are illegally occupied by the rich and powerful.

**Distributable Land Reform is feasible: Analysis based on official records**

- The possible impact of distributive land reform can not be questioned, because it was never pursued seriously in the past; the usufruct of such endeavour was always enjoyed by the rich and powerful having links with the institutional agents of the antipoor, pro-rich power structure. The equal distribution of the agricultural khas land (only the part which is officially shown as "identified") will give 0.37 acres per landless household, ranging between 0.72 acres in Sylhet division and 0.2 acres in Rajshahi division. Similar variations are evident by districts also. Similarly, equal distribution of khas water-bodies yields 0.38 acres per landless household, ranging between 1.68 acres per landless household in Barisal division and 0.13 acres in Chittagong division. Equal distribution of all types of khas land (land and water bodies) land yields an amount of 1.52 acres per la 6 jh sehold ranging between 4.81 acres in Chittagong and 0.73 acres in Dhaka and Rajshahi divisions. The districtwise average of khas land (agriculture and non-agricultural excluding the waterbodies) gives a figure of 1.14 acres of land per landless household, which for agricultural khas land comes to 0.37 acres per landless household. There are atleas 14 out of 64 districts in which khas land (agricultural plus non-agricultural) per landless household exceeds 1 acre.

**Distribution of khas land: Survey-based analysis**

- About 20 percent of the direct beneficiaries of khas land comprises of those who are not entitled to receive the same.

- Although "wide publicity" has been the stated policy, the government officials were among the least active agents to disclose and disseminate the information about the availability and distribution of khas land. Oral publicity through words-of-month is the major source where from most landless got the information about distribution of khas land.

- The whole process of listing of landless was not transparent in the sense that many people were not at all aware of the process. The listing work indicates adhocism. The landless themselves were not involved in the process. Moreover, the local influentials influenced much in the listing process.

- Majority mentioned that the application form is complicated and asking for many documents which is difficult to procure.

- In order to receive a piece of Khas land, on average, each beneficiary has spend about 72 working days which is 24 times more than the officially required liberal estimate. And there is none to see the misery and deprivation of the poor beneficiaries, and there is no system to compensate for the wage loss.
• Lack of office correspondence in terms of giving bribe, and lack of correspondence with the local influentials played major roles in not being selected to get khas land. 'Incomplete and inappropriate' application was termed as major factor in being rejected to get enlisted. Ignorance, inaccess and non-availability of appropriate information regarding submission of 'appropriate and complete' application might have played some critical roles. This again registers a blow to the 'fairness' of the distribution programme.

• Khas land distribution is mainly a post-liberation phenomenon. Most of the land what has been distributed so far has taken place during 1981-1996 period. The relative intensity of distribution was high during 1991-96 (56% in 7 years), followed by 198190 (36% in 10 years). The distribution of khas land was not much pronounced during 1997-99.

• The major cluster of reasons for which many of the landless were selected, but could not finally receive Khas land are as follows: potential beneficiaries lack of contact with government office, non-congenial relationship with local influentials illegal occupancy of Khas land by others, less availability of khas land, and "incomplete and inappropriate application".

• Overall, 47 percent have said that the distribution was equal, and 53 percent have said that the distribution was unequal. "Corruption in the land office" has played immense role in the unequal distribution of Khas land among the beneficiaries in Debhata and Shailkupa.

• Both the government officials and public representatives were the principal actors in the delivery mechanism of khas land. The local influentials are also important actors in the delivery mechanism.

Retention of khas land: Survey-based analysis

• Most respondents possessed the deed of khas land. But, regarding the question of status of possession over khas land and control over crops of khas land the situation

• is alarming. A significant proportion did not have complete (full) control over khas land (by complete control we mean complete control over deed, land and crop of khas land). On average, only 46.3 percent did have complete retention over khas land. The situation of complete retention is relatively better in Hatiya (82 percent) and totally disgusting in Gaibandha (0 percent). The remaining 53.7 percent did have either partial or complete non-retention over khas land. On average, 5 percent did have dejure complete non-retention (no control over deed, land and crop); 25.8 percent did have de facto complete non-retention over khas land (only had deed, but absolutely no control over land and crop). It thus follows that, 30.8 percent of the respondents fall in to the complete non-retention (dejure + de facto) category. In other words, one in three landless poor beneficiaries were not able to retain even the minimum possible benefit of khas land distributed to them.

• About one-fourth did have partial retention over khas land but with different degrees. A 5 percent did have partial retention to a high degree (not having deed but having full control over both the land and the crop). A very few did have partial retention to a moderate degree (full control over land, but partial control over crop). Again, 15.4 percent did have partial retention to a low degree (partial control over both land and crop). Furthermore, the remaining 2.7 percent of the respondents did
have partial retention to a lowest degree (having full or partial control over land, but partial control over crop).

- In spite of distribution of khas land among the landless peasants, a significant number of khas land receivers could not establish and retain their right over khas land for various reasons. The rate of full (complete) retention of 46.3 percent raises the very question about the efficiency and effectiveness of the whole programme within the existing framework of the politico-economic structure of Bangladesh. The high extent of partial retention (to different degree) and complete non-retention (both de jure and de-facto) are determined by various factors, again some of which are inherent to the structure.

- Interestingly, the period 1991-1994 is the time period which corresponds to the high distribution and high non-retention of khas land.

- Issue of illegal occupancy of khas land: Survey-based analysis

- The size of the trap of "illegal occupancy" of khas land, in terms of non-effective retention of the same by the landless, is huge: about 52 percent of the beneficiaries are victims of such trap. The strength of the trap is deeply ingrained into the politico-economic structure of our society - where dominance of the rich and local influentials inconnivance with the land officials over the poor and landless is a reality beyond any doubt.

- The intruders (engulfers) use all means of deceptions to occupy the khas land illegally - false documents, use coercive power, illegally occupy the khas land long before the distribution of the same, etc.

- Filing of case against the illegal occupants and holding discussion with the local officials have been done by many, but outcomes are frustrating without positive results. Many people affected by the illegal occupants did not visit the government officials.

- Involvement of the affected people with the stream of pro-people (poor) sociopolitical movement is insignificant. On the other hand, the pattern of involvement of various civil society institutions, varied by sample areas. But, in order to establish poor peoples' right on the khas land, not many people seek assistance of the civil society organizations, and involvement of various types of organizations varies by geographic locations. Some people sought assistance from the civil society mainly during the distribution (not during the listing work) of khas land, and in the process of disturbances created by the illegal occupants in case of problems faced in taking possession of the khas land or during the harvesting.

Changes in the economic conditions of the poor: Survey-based analysis

- Economic condition, as perceived by the beneficiaries, did not improve for most part after having the khas land. Improvement was reported by about 46 percent, and non improvement was reported by about 54 percent (including reporting of deterioration by about 36 percent). Thus, the khas land distribution program, as it was implemented, did not work so far the "official" aim to improve upon the economic condition of the landless beneficiaries is concerned.

- The degree of improvement of economic conditions is a function of status of retention of khas land (i.e.; status of control over land and crop).
• Compared to the pre-distribution (of Khas land) period not much improvements in the ownership of plough and cattle heads in the post-distribution period were observed. In many places, the situation has worsened even. Thus, ensuring retention alone will not be enough to improve upon the economic status.

• 'Cultivation' of own (khas) land was supposed to be the prime source of income for almost all the respondents (beneficiaries), however, only 51 percent of them have said so. The later share is close to the proportion of respondents who have said in favour of complete retention of khas land. Thus, there exists close relationship between a person's reporting of "cultivation" as prime source of income and his/her complete command and control over the khas land. The discrepancy found is most likely a concentrated expression of inefficient implementation of khas land distribution program.

• Sharp increase in the proportion of beneficiaries reporting "day labour" as main source of income implies worsening of the economic conditions of most respondents included in this category. Most respondents in this category comprise of those whose retention over land and crop was in the bottom of the retention scale (i.e.; from partial to complete non-retention). This can be denoted as a reflection of adverse inclusion, wherein many of the beneficiaries of khas land are being alienated from the possession over the land and crop, and then in the process of regaining the same invested money and energy and became economically weak, and finally reached a point in which there is no alternative (choice) but to sell their labour power in the market.

Khas land: Curse or blessing

• Khas land is a curse because it has created many new problem dimensions for the poor and landless including stress and strain in the relationships with the local influentials, samaj, and officials. It has overburdened the poor with various kinds and types of load which they are not ready (prepared) to carry -- talk to the officials (public servants), bargain (individually and collectively) for their legal rights, struggle for establishing human right to land and other public resources, go beyond samaj to establish a right cause, organize protest for the landless community, etc. The poor and landless beneficiaries of khas land are neither well informed nor well organized, but the people representing the delivery mechanism (government, politicians, local tauts and influentials) are closely tied with each other to materialize their vested interests. Moreover, the process of adverse inclusion is in operation: in the" contexts of free market economy, widespread corrupt practices and patriarchal norms, the poor-landless people face a problematic search for security; and they are forced to do many things for immediate gains (for example try to comply with and even strengthen patron-client relationships with the local influentials and land officials for a piece of khas land), while postponing the long term right issues (for example all khas land belongs to landless-poor and should be distributed to them within, say, next 5 years). Thus, under the condition of high "scarcity of resources" (e.g, khas land) combined with market forces, corruption and patriarchal norms and bondages, the poor themselves are caught into the trap of extensive rent-seeking behaviour, which is a condition for achieving immediate, practical needs, such as the khas land. From these standpoint, the whole system of distribution of khas land in which poor are just 'objects' - the khas land is a curse to the poor.

• Khas land is a blessing due to the fact that even within the present socio-political context, about 50 percent of the beneficiaries have reported improvements in their social and economic status after getting the khas land.
Non-retention of khas land: Reasons evident from Case studies

- The case studies permit us to conclude that, among others, following constitute the major elements in the process and mechanism of non-retention and dispossession of khas land: illegal occupants are powerful; illegal occupants have strong linkages with the local power structure; law favours the rich; legal complications themselves are illegal; official cooperation is superficial; trouble maker officials and UP members are capable enough to shift their responsibilities to others; illegal occupants use various forms of trap - credit, divide and rule, muscle, false documents, and other deceptive measures.

- The interaction of each of the institutional agents - the state, market, local government and local influentials - with the khas land holder is problematic, and reflects a "form of regime", which has particular implications for policy and strategy at different levels and scales of action.

- Organized struggle generates success: Case of Samata and Ranisankail

- Landless peasants can be astonishingly successful in their fight for land right if they are united, have solidarity, and participate in united movement.

- The peasants become successful if they are alert against any conspiracy of the influentials who are restless in persuading all means and ways to break the unity of the peasants.

- The peasants succeed when they are ready and prepared to fight from the grassroots level up to the Court level.

- The peasants succeed when they involve the progressive political parties, social organizations, students' organizations, and NGOs whose real mission coincides with those of the deprived mass.

- The peasants succeed when the leaders are counted by the administrators and policy makers of the upper hierarchy.

- The success depends much on the advocacy work of the civil society organizations who are involved in peasants movement and/or poor peoples' land right movement.

- The success expedites with the publicity in the national and local newspapers which create awareness among the people about their just struggle.

Suggestions and Recommendations

Based on the analysis of the whole situation and discussions with many relevant persons, the following suggestions are presented for considerations:

1. All khas land - agricultural, nonagricultural and waterbodies - should be identified immediately.

2. Information pertaining to the problems of identification of khas land should be published in the daily Bangla Newspapers, telecasted, broadcasted, and the same should be disseminated up to the grassroots level.

3. Mis-classification of khas land should be stopped, e.g., transformation of paddy fields into waterbodies for shrimp cultivation in the coastal areas.
4. *All khas* land distributed and distributable should be recovered from the illegal occupants, as soon as possible.

5. The committee for the identification of *khas* land should be reorganized. The representatives of peasants' organization, *khet-mojur* (agricultural labour), political parties, NGOs, social organization, school teachers should be included in the committees at all levels.

6. Measures should be taken to minimize the influence of the local influentials and officials in the committee who exercise corrupt practice.

7. *Khas* Land Management Committee at the national level, and a *Khas* land Management and Distribution Committee at the district level with strong presence of peasants and landless representatives are needed. The District Committee should be empowered to investigate the disputes over *khas* land and give decision about ownership. In addition, this committee will report to the Land Ministry of any misdeeds committed by any government officials regarding *khas* land.

8. The participation of the poor and their formal and informal institutions/organizations in the process of identification, selection, distribution, and utilization of *khas* land should be maximized.

9. The *khas* land distribution "application form" is a complicated one, which is difficult to fill-up even by an educated person. The form should be made easy and written in simple language.

10. Mechanisms need to be devised to ensure effective retention of *khas* agricultural land by the landless poor which has already been distributed.

11. Legal support system needs to be institutionalized, which will ensure speedy resolution of problems of possession on land and control over crops. NGO and other professional bodies' support to provide legal aid to the affected landless should be strengthened.

12. Support system needs to be instituted to provide relevant productive assets (cattle, plough, irrigation machineries and equipments) and recurrent inputs (seed, fertilizer, water, pesticide, etc.) to the poor, as and when needed, without fail. As part of the support mechanism, credit system for the poor, and assistance in marketing of the outputs produced in the *khas* land should be instituted.

13. Provide price-support system, so that poor-landless owner of *khas* land do not fall into the trap of "free market" and forced to go for "distress sale of assets".

14. Distribute all agricultural *khas* land (identified 803,308 acres) to the poor and landless immediately. This should form the real corner stone of our national poverty eradication agenda.

15. All information relating to the distribution of agricultural *khas* land should be published in the daily Bangla Newspapers, telecasted and broadcasted, and be disseminated upto grassroots level.

16. Organize cooperative farming in all possible situations, e.g., if relatively large compact area is available, or even if such compact area is not available - organize cooperative for input, credit, marketing and other productive purposes.
17. Distribute available non-agricultural *khas* land for uplifting the livelihood of the urban poor and forest community (including the indigenous people, where applicable).

18. Proactively pursue distribution of *khas* water-bodies to uplift the life of the fishermen and other professional communities.

19. The peasants should be prepared to fight both at the field level to face the opponents physically, and at the same time, at the level of local Tehsil office, AC Land, TNO, Police station and ultimately at the level of the Court for their just cause.

20. Advocacy work of the civil society organizations who are involved in peasant movement and/or poor peoples' land right movement should be strengthened.

21. Success stories about peasants land right movements should be published and disseminated widely.

22. Intensive and continuous monitoring system should be developed to ensure transparency and efficiency of the land officials.

23. A "watch-dog" mechanism (e.g., citizens committee) needs to be developed to follow-up the post-distribution situation.

24. Diara survey of the alluvial and accreted land should be completed within shortest possible time.

25. Training should be imparted to those who are responsible for identification, management and distribution of *khas* land.

26. Land-related laws should be upgraded to speed-up the distribution process which take unusually long time due to bureaucratic procrastination.

27. Security of the land officials should be ensured during conduction of the survey and distribution of *khas* land.

28. Along with the government's survey, independent committee comprising the representatives of landless peasants, peasants organization, political parties, NGOs should be set up to identify the landless and *khas* land.

29. Orientation training should be organized for the landless people to impart them with the knowledge about the necessary land-related laws.

30. Organizing a pressure group comprising of local landless and conscious citizens is needed to launch a movement against grabbing of lands by the local influentials.

31. The process of computerization of land records should be speeded-up to stop the forging of deeds and other land-related documents.

32. An effective Land Policy needs to be developed.

33. The civil law should be upgraded and made understandable to the commoners.

34. All-out efforts should be made to expand the housing arrangements for the poor on *khas* land.

35. All cases launched by the local influentials against the landless peasants should be withdrawn.
36. A *Khas* Land Bank should be set-up to preserve all types of records on *khas* land by types, locations, distribution status, status of dispute resolution, and so on.

The implementation of the above suggestions and recommendations is, no doubt, a challenging task. In order to materialize the proposed suggestions and recommendations, the following **preconditions** should be fulfilled:

1. The government should acknowledge that there exists a vested group who amassed their fortune by grabbing *khas* land. This vested interest group stand in the way of a relatively fair distribution of *khas* land.

2. The government should recognize that a large number of illegal occupants of *khas* land always belong to the 'present party in power' (PPP).

3. The land recording system is out-dated and land officials are inefficient and corrupt. The age-old system should be changed which will ensure transparency, to an acceptable extent.

4. The government should realize that the poverty level in the rural area could be brought down to a minimum level if the landless peasants are distributed with *khas* land.

5. A special session of the Parliament should be devoted to discuss the whole range of issues pertaining to the identification, distribution and retention of *khas* land.

6. The thana level courts should be upgraded to the extent so as to *khas* land related lawsuit could be solved at that level.

7. Each and every political party should clearly clarify their positions in their election manifesto about the whole range of issues pertaining to the *khas* land.

8. All the peasants' organizations should be united on the question of poor people's right over *khas* land, and launch movement against government officials' corrupt practices and inefficiencies of the government regarding *khas* land.

9. The local and thana level social organizations, NGOs, student fronts of the political parties should raise their voice for a free and fair distribution of *khas* land.