

# Land Banking for the Poor and Vulnerable: How Relevant in Nepal?

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**Key words:** Land Bank, Access to Land, Security of Tenure, Social Tenure Domain Model, Fit-for-Purpose Land Administration

## SUMMARY

The National Land Policy, 2019 recognized the informal tenure on land for the first time in Nepal, among other reformative actions. Subsequently, necessary land legislations were created in 2020 to provide land rights for the landless and regularization of informal tenure for all. Additionally, in 2019, the Land Use Act introduced the Land Bank concept in the legislation for the first time, though the idea was brought into discussions long ago, to maximize land utilization and improve productivity on land. The Federal Parliament passed the annual plan and programme for the FY 2021-22 and indicated establishment of a Land Banking programme with initial operation in some 300 municipalities.

Land Banking in Nepal is largely discussed with mixed reactions after the concept was incorporated in the report of the High-Level Land Reform Commission in 1994. Land rights activists and civil society organizations have argued that the Land Banking schemes will be utilized by wealthy and affluent to grab land to displace tillers from, and access to land. The Government on the other hand has developed concept to encourage municipalities to allocate land deposited at the land banking scheme by the landowners and vacant land available in their jurisdiction to the poor and vulnerable farmers on mutually agreed terms as recorded at the municipality level. The aim for this is to utilize vacant land and improve production to replace the existing informal system of share-cropping and verbal contracts prevalent in many agrarian communities. The argument is that with the formalization of land banking, the farmers' access to land is documented and access to tenure is secured. With such divergent and contradicting views in place, the scheme is at limbo- more on policy and less in practice.

In this context, an idea of piloting land banking was brought forward to test the validity of divergent arguments existing. With this idea, pilot implementation of land banking in four municipalities of Dang Valley in western Nepal is currently in progress. The project is in its initial stages, and as such, this paper will discuss the preliminary findings on the leasing land through land banking to poor and vulnerable communities. The paper aims to evaluate the effectiveness and coherence of the methods employed in achieving the stated objectives, while also emphasizing the key findings of the project. The results of the pilot project shall serve to respond to the question, i.e., whether land banking for the poor and vulnerable is relevant in Nepal, while also providing lessons for the future of the scheme in Nepal and learning for other countries in similar situation.

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## 1. INTRODUCTION

Nepal is a mountainous country with a diverse topography and multitude of ethnicity and cultures. Until 1951 Nepal was ruled under Rana oligarchy with limited exposure to modern governance and economic system. In the absence of a democratic system, and while the State was biased towards aristocrats and the affluent, land itself and the revenue generated from the land used to be the main source of income for State functions. As such different land tenure systems existed. The aristocrats close to the ruling class, mainly family members and their near and dear ones like priests and high officials, were offered large tranches of land and became landlords while the actual peasants toiling on the land were left to be landless tenants (Chhatkuli et al, 2019). The Dalits, historically dependent on menial jobs for their livelihood and inlisted as such by the Dalit Commission, and the indigenous people were the major victims due to marginalization in land ownership. Some reports indicate that a typical landlord would own more than 10,000 hectares of land scattered in different districts (Thapa, 2023). After the political change of 1951 different policy and legislative provisions were made to implement land tenure reforms and improve the land governance system in favor of the poor and vulnerable. The land reform programme of 1964 was a major turning point when land legislation was passed to fix the ceiling of private land holdings, confiscation of land above the prescribed land ceiling to be allocated to the landless, identification of tenants and distribution of land between the tenant and the landlord. However, even after decades the land reform programme was far from being a success. According to Alden-Wily et al, (2008), several tenants were excluded from being enumerated, landlessness continued, squatting of land and informal tenure continued, and the system of different forms of unregistered tenancy of land under verbal contracts continued. The system of unregistered tenancy is generally exploitative in favor of landlords and prone to forced eviction. As such there is hardly any incentives for the peasant as well as the landlord to invest on the land for a productive use.

An earlier study on locally present land tenure typologies in Nepal concluded that “the local tenure arrangements like share-cropping and other forms of unregistered tenancy provide room for continuation of feudal land tenure relations” and that “discrepancy between statutory land tenure and locally existing land tenure typology is a dilemma for good land governance” (Chhatkuli et al, 2019). Land banking as a concept of “willing lessor and willing lessee” was considered an option for addressing this complexity. While the notion has been received with mixed reactions in Nepal, this paper will examine the concept from the policy and legislative perspectives and report on the preliminary findings on the status of informal tenancy in four municipalities of Dang Valley in mid-western Nepal: Lamahi, Rapti, Gandawa and Rajpur.

The paper will also provide a conceptual framework for the application of land banking as a way forward.

## **2. RESEARCH METHODOLOGY**

The study is the result of ongoing interventions of UN-Habitat and Global Land Tool Network (GLTN) in Nepal supporting 2019 national land policy implementation, mainly focussing on access to land and land tenure security for all Nepalis. Information from secondary sources through literature review was collected and qualitative techniques were utilized to analyse primary data collected from field observations.

Secondary source of relevant information consisted of a range of published and unpublished literature produced by different governmental and non-governmental organisations, like government plans and policies, reports of different land reform programmes and land related Commissions, and reports and other documentations from relevant reserchers and organizations. Primary data were collected by the project team through key informant interviews (KIIs) with knowledgeable persons and tenant farmers; focus group discussion (FGD) with local farmers mainly operating as share-croppers and tenants and other stakeholders in different locations of the 33 Wards in the four project areas consisting of Lamahi Municipality and three other Rural Minciaplities (RM) of Rapti, Gadhawa and Rajpur.

Key informants in different sites included knowledgeable persons such as tenant cultivators, representatives of political parties working at the local level, members of civil society organizations, representatives of Tharu ethnics being the major communities in the area, *Dalits* youths, elderly and women. Focused group discussions and key informant interviews were conducted in a semi-structured process guided by a checklist of key points that were discussed. The FGD and KII were conducted by local project team members who have substantive knowledge of the area, while the check list prepared for FGD assured to check any bias. Further the enumerators took a transect walk to assess the situation on the ground, while conducting random inquiries with the locals providing further validation of the data collected. In addition to these major tools used for data collection, feedback from previous visits and consultations with concerned stakeholders conducted by the team on different occasions was also considered.

## **3. LAND BANKING AS A CONCEPT AND CONTROVERSY**

Land banking is a concept widely advocated as a tool for access to, and redistribution of land and land reform. However, there is a mixed understanding, particularly in Nepal, about the functioning and application of land banking. This section dwells on the concept of land banking in general, the government perspectives and the land rights activists' perspectives through the study of some relevant literature.

### 3.1 The Land banking concept

In a simpler terms, land banking involves collection of different parcels of land from different tenureholders, users or owners and its allocation, reallocation or distribution/ redistribution to other tenureholders, users or owners. The concept of land banking emerged as an urban planning tool in the 1960s as means of conversion of abandoned properties into alternative uses (Alexander 2005). Land banks were conceptualized as governmental or semi-governmental entities that specialize in the conversion of vacant and abandoned or foreclosed properties into productive use. Land banking and land banks are perceived in different aspects in local and regional approaches as depositories of land, development partnering, or land trusts in responses to disaster responses or land reform as well (Alexander, 2015). Land banking could also involve acquisition of land prior to development of the area, or in preparation for needs to mitigate future development impacts (Powers, undated ).

One of the important areas of the application of land banking would be in the implementation of land redistribution programme as a means of land tenure reform under a broader land reform perspective. Land redistribution via expropriation is a complex and politically charged issue inviting conflicts of interests between the landless and the larger landholder landlords. Two distinct approaches for acquiring land are considered- the *Compulsory Acquisition or Expropriation Approach* and the *Willing Seller–Willing Buyer Approach* (World Bank, 2009).

### 3.2 Land Reform in Nepal

Nepal has a history of skewed land ownership due its legacy of landlordism until the political change of 1951. While a elite class close to the ruling class were larger land owning landlords, the peasants and working class remained landless and in many cases, forced laborers or tenants on the land of the landlords. The land reform programme initiated in 1964 provided for ceiling of land under private ownership, compulsory expropriation of land above the ceiling and redistribution to the landless, and registration of tenants on the land and abolition of dual ownership through redistribution of land between the landlord and the tenant farmer. However the land reform programme is far from success (Alden-Wily et al, 2008). Many tenants were omitted from registration due to one or other reasons. The practices and the cases of unregistered tenancy in different forms including share-cropping and contract farming still continues. The practices of forced farm labour like *Kamaiya* or *Haliya* and domestic labour like *Kamlari* have been statutorily abolished but in the lack of their full rehabilitation, the remnants of these practices do exist in one or other form. Many households, estimated to be 1.3 million, mainly from the poor landless and vulnerable communities are forced to make a living through squatting on *Ailani* or vacant public land, and operate under informal tenure (Panday et al, 2021). With only 81.6 percent of land holdings fully operated by the landowners themselves and the rest either partly operated, or rented, or operated under other arrangements (NSO, 2023) the case of informal tenancy on private land is more than remarkable. The National Land Policy of 2019 for the first time recognized the informal tenure on land and provided for the

reform in land legislations which were enacted in 2020, i.e., amendment of the Land Act 1964 (8th Amendment/2020) and the land related Regulations 1964 (18th Amendment/2020) which provide for the recognition of informal tenure and ownership of land for “landless squatters” and “unmanaged dwellers” and prescribes that landless Dalits and Sukumbasi should be provided land for housing and agriculture to support livelihood requirements (of the family). The amendments provide for the allocation of land to the landless *Dalit*, the landless *Sukumbasi* and regularization of land informal settlers upto the designated size based on the location as following:

**Table 1: Maximum Area of land to be allocated or Regularized for Landless Sukumbasi or Landless *Dalit* free of cost without payment of revenue**

Region	Area of Land for Housing purpose	Area of Land for Agriculture purpose	Remarks
Urban areas in Kathmandu Valley and other urban municipalities	130 sq.m.	Not Available	May provide alternate provisions for housing.
Rural areas in any areas and in Terai and Inner Terai	340 sq.m.	2,000 sq.m.	To be relocated if residing in land on negative list
Rural areas in mountainous regions	340 sq.m.	3,000 sq.m.	To be relocated if residing in land on negative list

**Table 2: Maximum Area of land to be Regularized for informal settler in the place where settled upon payment of cost/ revenue**

Region	Area of Land for Housing purpose	Area of Land for Agriculture purpose	Remarks
Urban areas in Kathmandu Valley and other urban municipalities	130 sq.m.	Not Available	To be displaced if land falls on negative list
Other rural areas in Terai, Inner Terai and mountaneous atreas	1,000 sq.m.	10,000 sq.m.	To be displaced if land falls on negative list

Note: Landless *Sukumbasi* is defined as “a person having no land resistered in own or family name throughout the country and having economic status such that can not acquire a piece of land through own or family income”. *Dalit* is a person of social caste listed as such by the National *Dalit* Commission. Informal settler is defined as “a person having some land registered within the country on own or family name and operating public *Ailani* land for more than 10 years”

As the sizes of the land parcels allocated to the landless *Sukumbasi* or the informal settler are limited, this might be insufficient for the peasant family dependent on subsistance farming to make a living and as such they would require more land for for farming to support their livelihood. On the other hand, land owners engaged in different professions do not find incentives for putting their toil on their farm. Further, a large number of youths mostly dependent on agriculture have been going abroad for foreign employment, and as such, there

is a growing tendency for increase in the vacant agricultural land holdings. The land legislation provides for abolition of dual ownership, i.e. no land operated by the tenant through whatever arrangement and not recorded in the tenancy record aftermath of 1964 land reform are not recognized as such and the ownership of land is not challenged. However, due to ignorance of this legal provision many landowners refuse to rent out or provide land to the farmers on long term lease with fear of tenancy claims by the tenants. There is a need for balancing the need for land for farming and use of surplus land available without compromising of the fundamental rights of the individuals, to secured ownership of land and property.

### **3.3 Land banking a controversial issue in Nepal**

Land reform has been a constant political agenda of each of the political changes in Nepal; in 1951, 1960, 1990 and 2007. After the political change of 1990 with the fall of the party-less Panchayat system, the newly formed democratic government formed a High-Level Land Reform Commission in 1995. The Commission made elaborate studies within the country and the best practices abroad. The Commission for the first time in Nepal recommended the formation of a Land Bank by providing compensation for the land expropriated from the landlords falling above the land ceiling, and the land thus acquired to be allocated to the poor and landless recipient households on easy installments. Three successive annual plans and budgets of the Government of Nepal 2003/04, 2004/05 and 2005/06 proposed the establishment of a Land Bank with the Government and additional World Bank funding (Badal Report, 1995). After another political change of 2007, successive governments formed High Level Land Reform Commission in 2008 and another High-Level Commission on Scientific Land Reform in 2009. The latter commission made elaborate recommendations for the implementation of a Land Bank based on cooperatives. It envisaged the funding through national and international financial sources, contribution from private sectors and supporting establishment of poverty alleviation and social development fund for the benefit of landless *Sukumbasi*, *Dalit* and vulnerable communities. The land bank was to further be used to pay compensation of the land above land ceiling acquired from the landlords and collected from the recipient farmers on installments (Ghanendra Basnet Report, 2010)

However, the Land Banking issue has remained a continuous agenda in Nepal, remaining on policy but never implemented. While different Commissions and studies suggest the use of land banking as a important tool for financing and implementing different land redistribution and land reform activities for a broader agrarian reforms, the efforts are in general contested by the civil society and land rights activists who view it as a regressive agenda and diverting away from real land reforms (CSRC/ILC report, undated), and as such the Government has continuously shied away from its implementation.

The Government in its annual budget and plan for the fiscal year 2020/21 announced the establishment of a Land Bank with a preliminary budget of USD 4.5 million, and to operate in 300 out of 753 municipalities in the beginning. However, the controversy “Land Bank for the

poor and vulnerable: How relevant” still looms. The common minimum programme of the coalition government formed in 2023 explicitly announced to implement the concept of land bank for the transformation of agriculture sector (CMP, 2023)

Addressing the concerns of how land banking can be made pro-poor and supportive to the most vulnerable through the productive use of unused and underutilized land, the Ministry of Land Management, Cooperatives and Poverty Alleviation developed a concept idea and provided a detailed information note to be provided by the local municipalities for the formation and land banking at the local levels (MoLMCPA). However, without piloting the concept on the ground, the answer to the concerns raised by the civil society and the land rights activists cannot be found. A pilot implementation of one of the concepts of providing land to the landless and land-meagre sharecropper farmers through access to unused and underutilized public and private land in four municipalities in Dang district is progressing.

#### **4. FORMALIZING CONTRACTS OF WILLING LESSEOR WILLING LESSEE FOR SECURED ACCESS TO LAND**

##### **4.1 Findings of the Key Informant Interviews**

The 16 key informants interviews included landowners providing land to the tenants through contract or sharecropping arrangement, the local civil society and municipal leaders. The results of key informant interviews and information collected from knowledgeable municipal authorities and through transect walks found that out of the total 41,077 households/HHs, 4,563 HHs or 11.1% in the four municipalities were operating land under different informal tenancy arrangements. Most of them were operating land under different contract or sharecropping, and on unwritten arrangements with mostly absentee landowners. Additionally, findings revealed that the contracts renewed or terminated annually at the time of traditional *Maghi* festival (mid-January). Unused public land is also tilled, obviously without written arrangements. In these situations where there is lack of secure tenure and economic incentives, no efforts are made to maintain or improve the productivity of the land, both by the farming households and the landowners. In the four municipalities, nearly two-third of informal tenants operate under contract farming and the rest under share-cropping arrangement mainly *Adhiya*.

**Table 3: No of contract farmers and Sharecroppers in the four project municipalities**

Municipality	Contract farming HHs	Sharecropping HHs			Total No of Tenancy HH
		<i>Adhiya</i>	<i>3 Kur</i>	<i>5 Kur</i>	
Rajpur RM	631	422	20	0	1,073
Gadhawa RM	512	368	15	0	895
Lamahi Mun	888	186	0	5	1,079
Rapti RM	901	615	0	0	1,516
TOTAL	2,932 (64.1%)	1,591 (34.9%)	35 (0.8%)	5 (0.2%)	4,563 (100%)

Note: *Adhiya*, *3 Kur* and *5 Kur* are traditional practices of sharing crops and investments in a share-cropping farming arrangement. The crops are shared between the tenant and landowner fifty-fifty in *Adhiya* while this is 1/3<sup>rd</sup> to the landowner and 2/3<sup>rd</sup> with the tenant in *3 Kur*, and 3/5<sup>th</sup> to the landowner and 2/5<sup>rd</sup> with the tenant in *5 Kur*. Seeds and fertilisers are invested at the same proportions. *Adhiya* sharecropping arrangement is the general practice in case of unregistered tenants while *3 kur* and *5 kur* are practiced in the case where tenants are registered but land partition is pending. Regarding contract farming, the general rate of annual rent in practice is from USD 10 to USD 20 per Kattha (335 sq. m.) of land depending on the location.

Considering the ethnicity of contract farmers and sharecroppers in the four municipalities they are mostly indigenous *Tharu* (90.5%) and Madhesi, the tribals of Terai (8.0%).

**Table 3: Distribution of contract farmers and sharecroppers by ethnicity in the four municipalities**

Municipality	Dalit HHs	Tharu HHs	Madhesi HHs	Other HHs	Total HHS
Rajpur RM	7	775	321	10	1,113
Gadhawa RM	0	875	0	0	875
Lamahi Mun	0	2,032	47	0	1,079
Rapti RM	39	1,446	0	11	1,496
TOTAL	46 (1.0%)	4,128 (90.5%)	368 (8.0%)	21 (0.5%)	4,563 (100%)

The table below shows that around 3/4<sup>th</sup> of the contract farmers and sharecroppers are either landless or informal settlers signifying scarcity of land to support livelihoods, even after regularization of land operating under informal tenure.



**Table 4: Distribution of contract farmers and sharecroppers by landlessness and informality in the four municipalities**

Municipality	Landless Dalit HHs	Landless Sukumbasi HHS	Total No of landless HHs	Informal Settler HHs	Total of landless and informal settler HHs	HHs other than landless and informal settlers	Total HHs operating under informal tenancy
Rajpur RM	7	128	135	671	806		
Gadhawa RM	0	53	53	400	453		
Lamahi Mun	0	116	116	866	982		
Rapti RM	16	77	93	1,167	1,260		
<b>TOTAL</b>	<b>23</b>	<b>374</b>	<b>397</b> (8.7%)	<b>3,104</b> (68.0%)	<b>3,501</b> (76.7%)	<b>1,062</b> (23.3%)	<b>4,563</b> (100%)

Summary of key other observations from the KII are as follows:

- While contract farming is mainly in practice with more than 95% under verbal contracts (as some informants indicated), the annual renewal system perpetuates insecurity of tenure.
- Some landowners indicated their preference to sharecropping practices while most of the informants recommended contract farming.
- Most of the informants recommended having a fixed rent set up by the municipality based on structure and size of the parcel, its productivity, and access road and irrigation facilities.
- Informants also prefer written contracts to be made by the tenants and the landowners in the presence of municipalities as opposed to having the status quo.
- Another recommendation is for the municipalities to encourage contract farming to the landless *Sukumbasi* and vulnerable communities through grants.
- It was also recommended that municipalities should discourage landowners from leaving land fallow through penalties, and encourage to grant for contract farming to the landless *Sukumbasi* and vulnerable communities by guaranteeing that their formal ownership on land is not restricted.

## 4.2 Findings of the Focused Group Discussion

A land banking model with the concept of “willing lessor willing lessee” is being developed in the four project municipalities of Rajpur RM, Gadhawa RM, Lamahi municipality, and Rapti RM of Dang district in Nepal. The area is mostly inhabited by *Tharu* indigenous communities. As per data received from most households, 57.3% of them, are either landless or informal settlers settled in public *Ailani* land. Approximately 11.2% of the HHs are completely landless while about 46.1% are informal settlers.

**Table 6: Total Number of households with landless and informal settler households**

Municipality	Total No of HHs	No of Landless HHs	No of Informal settlers HHs	Total of landless and informal settlers HHs
Rajpur RM	5,829	868	2,901	3,769
Gadhawa RM	9,964	1,413	5,997	7,410
Lamahi Mun.	13,458	1,526	6,258	7,784
Rapti RM	11,826	789	3,776	4,565
TOTAL	41,077 (100%)	4,596 (11.2%)	18,932 (46.1%)	23,528 (57.3%)

A total of 255 participants who are landless and informal settlers operating land under different unregistered tenancy arrangements participated in the 17 focused group discussions.. They consisted of 123 (48%) females and 132 (52%) males. Regarding ethnicity nearly 99% of them were from *Tharu* indigenous community.



The following are key findings from the FGD:

- About 141 HHs (55.3%) were operating under different share-cropping arrangements and the rest 114 HHs (44.7%) under verbal contracts.
- There were some 20 hectares of vacant or barren land which the landowner could avail on contract farming or sharecropping basis.
- Out of the 255 respondents 234 (91.8%) prefer to operate land under contract farming.
- All the participants opined the need for written contracts. They recommend written contracts for 5 to 10 years and facilitation of this process through the local municipality (for the local municipality to act as an overseer of the process). Currently only 2 HHs have written contracts for 5 and 3 years respectively.

## 5. Discussions and Recommendations

There are distinct differences in the understanding on the concept and model of land banking in Nepal among the Government, the civil society and the land rights activists and land professionals alike. The different land reform commissions have recommended land banking as a tool to provide access to the landless and implement a “scientific” land reform and the Government has consistently tried to implement this but failing in every attempt in the face of growing controversy, not only on the model but also in the concept itself. The major concern of

the civil society, the land activists, the land professional and the government alike is on how the land banking can be made pro-poor and sensitive to the needs of landless *Sukumbasi* and the land-meagre farmers dependent on agriculture for their livelihoods.

It is evident that the policy, concept and the implementation model of any land tool including land banking should be context and location specific and fit-for-purpose. In the project area, a specific model of land banking as a process of collection of the unused and unutilized land available for farming and the information on the landless farmers needing this land for farming is recommended. The appropriation of land on a contract basis is negotiated within the patronages of the municipalities on a *willing lessor willing lessee* concept. Social Tenure Domain Model (STDM) tool is recommended for the creating of information base at the municipality. With the terms of the contracts negotiated between the lessor and lessee and moderated through local facilitation by civil society organizations, and the municipalities, a win-win on both sides is guaranteed. The poor and landless farmers will gain secured tenure on land for a specified period of time, and the landowners are assured about the ownership of land and income through negotiated rent on the land. Necessary policy legislation, and guidelines at the local level need to be developed in line with the concept introduced by the federal government. The guidelines could also consider a monitoring mechanism represented by the landowner, tenant, the municipality, and any other representatives from interest groups.

## 6. CONCLUSIONS

Land banking is a widely talked but a distant concept in Nepal due to differences in the understanding of the concept and model. It has to be customized, adapted and adopted with due consideration to the context and need. There cannot be a single option neither a single solution. At the same time, several activities should be considered with a vision that unused and unutilized land are accessed for development and productive utilization. However, the tools need to be piloted to test their applicability. The project in the four municipalities of Dang district under progress attempts to test the feasibility of secure access to land to the landless through negotiated and recorded contracts between the tenant and the landowner moderated by the local government on a *willing lessor willing lessee* model.

The preliminary findings from the pilot project shed light on the potential of land banking to address land tenure issues, particularly for the poor and vulnerable communities. Through leasing land to those in need, the project aims to provide secure tenure and support livelihoods. However, challenges persist, including the need for formalizing contracts, ensuring equitable access to land, and balancing the interests of landowners and tenants.

As the project is still in progress, the final outcomes are yet to come. We are fully hopeful that these results will give us valuable lessons for expanding and scaling up the scheme across the country. Additionally, we believe, the findings will serve as a model for other countries facing similar challenges and contexts.

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