

THE LAND BANK IN NEPAL

Is it relevant? Is it required?

1. Introduction

The government of Nepal has allocated US \$ 4,263,300 (500 million NPR) in the annual budget and work plan of FY 2020/21 (FY 2077/78) for the establishment of a Land Bank that would operate in 300 municipal level. With its announcement, a debate emerged as to whether the establishment of a land bank is essential in the current context and to what extent it will contribute to ambitious government targets related to land.

This position paper draws upon decades of engaged research, activism and advocacy on land and agrarian issues in Nepal, as well as multi-stakeholder deliberations with experts, land and resource users. It intends to explicitly address the effectiveness of the Land Bank policy, as proposed.

The two authoring organisations, the Community Self-Resilience Center (CSRC¹) and the National Land Rights Forum (NLR²), provide context on the options proposed by the Land Bank and intend to meaningfully contribute to the ongoing debate at a time where few details on the policy are known and in which the government has presented the policy as a silver bullet to Nepal's agrarian crisis without a clear, conceptual underpinning. As a result, many people have interpreted the Land Bank differently according to their own interests; which further fueled the debate on the objectives, modality, and nature of the 'Land Bank' in Nepal.

COVID – 19 has had disproportionate impact on informal settlers, landless communities and small peasants. These communities have already experienced job losses, decrease in income, food shortages and limited access to water and sanitation. Marginalized communities felt that they were left behind as the Land Bank would only further drive inequality between landowners and tenants

1 See more about CSRC at www.csrcnepal.org

2 See more about NLR at www.nlrfnepal.org

by safeguarding the control that landowners have over the land. The policy was an example of a regressive step taken by the Government during nationwide lockdowns as they were expecting less resistance from the ground.

2. Background: the Land Bank in Government Documents

The High-level Commission on Land Reform (Badal), 1994 (2051 B.S.) first proposed the design and implementation of the Land Bank as a means to provide compensation for land beyond the allowed land ceiling introduced by the government; and to collect money from recipient households on an installment basis. These aspects remained entirely unimplemented and no discussions that would have allowed greater clarity on the objectives of the Land Bank took place at that time.

Subsequently, the Land Bank was included in the government's Tenth Five-Year Plan and in the 3 yearly plans of the government³. . Notably, the FY 2003/2004 (2060/61B.S.) yearly plan included a provision 'to establish a land bank' with total funding of US \$ 25,579,809 (NPR 3 Billion) of which US \$ 8,526,603 (NPR 1 billion) from the Nepalese Government and US \$ 170,532,060 (NPR 2 billion) from the World Bank was expected.

Despite these advancements, however, the government decided against the implementation of the Land Bank provision on the grounds that it diverted the debate away from real land reform and that it would fail to ensure the rights of the landless, tenants, *Harawa*⁴, *Charawa*, *Ex-Haliya*⁵ and *Ex-Kamaiya*⁶.

3. Context, Discussion and Relevance

According to trusted sources, as well as information obtained from informal and formal discussions at various levels, it is understood that the Land Bank – as currently planned at the local level – has the following objectives:

- i. Owners of agricultural land, who not engaged in agricultural activities, are worried that they have to provide tenancy rights in case they allow others to farm their land, which they believe would harm their ownership security and let their land lie fallow. The Land Bank give the landowners a choice to deposit their land in the Land Bank and facilitates the use of such fallow land where ownership security of land owners come into being alongside, which eventually encourages land owners to allow others use their land through land leases.
- ii. The Land Bank creates conditions for longer-term land leases and increases access to land by the landless. In theory, through the Land Bank, everyone could gain access to land if they were interested in leasing.

3 Fiscal Years 2003/04 (2060/61 B.S.), 2004/05 (2061/62 B.S.) and 2005/06 (2062/63 B.S.).

4 Harawa – system of hiring a plough-man, usually a bonded arrangement with the ploughman working for free to pay-off the debts in Tarai Region of Nepal.

5 Ex-Haliya – freed bonded laborer (the ploughman in hilly region of Nepal). Haliya system of bonded laborer was abolished in September 2008.

6 Ex-Kamaiya – freed bonded laborer. Kamaiya is a system of keeping bonded laborer from Tharu, an indigenous community in Mid and Far-western Tarai. It was abolished in 2000.

- iii. In the context of COVID-19, the Land Bank will ease the burden on the unemployed, as those people who lost jobs in urban centers and abroad are returning to their villages. These people will be able to lease land for agricultural purpose and find employment on farms, increasing employment and production in rural areas.
- iv. The Land Bank will allow fallow land to be utilised fully while integrated farming can be done on large tracts of land through zoning. This should increase investment in agriculture, accompanied by improved technology and increases to production and productivity that would reduce the import of edible commodities significantly.

However honorable the aspirations of the Land Bank, there are reasons to believe that those listed above may not be fulfilled in reality. The approach taken seems in opposition to that taken by pro-tiller land reform. Paradoxically, the Land Bank could have the effect of promoting, rather than reducing remnants and unjust practices of the feudalistic land system such as *Birta*⁷, *tenancy*, *Harawa*, *Charawa*, *Haliya* and *Kamaiya*.

Such outcomes would further foment conflict, exacerbating existing ideological disagreements on land reform in Nepal. The country could move closer to neoliberalism and away from the brand of socialism envisioned in the constitution. Therefore, with the following analytical points we clarify our position with regards to the Land Bank:

- i. The Tenancy Land Right ended in 1996 (2053 B.S.) with the 4th amendment to the Land Reform Act 1964 (2021 B.S.). In this context, such claims – that *'ownership will be shared if land is allowed to be used under traditional practices such as share-cropping and contract, therefore land owners are unwilling to allow others to use land under such arrangement'* – have little basis or strong grounds. As such, this cannot be a root cause of land being left fallow.
- ii. Almost one fourth of the land being cultivated in Nepal is presently operated under sharecropping and contract farming, managed by mutual understandings and agreements between the landowner and the tiller. The rent collected from land being used for long period is relatively low. With the establishment of the Land Bank, the landowner will be allowed to withdraw land from previous arrangements and instead place it in the land bank where a person paying higher rent can gain use of the land. In this way, the Land Bank is not only acting as inhabiting force for contemporary unequal land relations but also causing the further proletarianization of marginalized peasants by eroding their access to land. Eventually, land will be confined to the hands of a class that is not engaged in farming while small farmers will be converted into mere agricultural labourers.
- iii. A major portion of so-called fallow land is, at present, less fertile, lacking access to irrigation equipment and characterised by higher rates of exposure to wild animals. These low-quality lands will constitute a large portion of the land received by Land Bank. Therefore, the claim that this less-fertile land going to the Land Bank would generate a large number of jobs and gains is disputable. Currently, agricultural activity on these lands is sustained for two reasons – first, the landowners themselves farm their land and second, they do not have to pay a wage for agriculture labour.
- iv. The Land Bank will provide *“land received through leasing from private land owners; unused government*

⁷ Birta Land is tax free land granted by the state to the individuals that is inheritable. This system is abolished in 1959

land; and land restored from river control” on lease for certain periods of time to those willing to utilise it for an agricultural purpose. That the land bank will include leases restored of government land will lend itself to the entrance of big corporations rather than access to a more needful peasant class.

- v. The Land Issues Resolving Commission (LIRC) has formed and already begun working to manage issues of Nepal’s landless and squatters. If the Land Bank is to lease government and land restored from river control, from where will the LIRC get land for the landless? Conflicting programs implemented at the local level create such a dilemma. Interest groups can obstruct processes meant to resolve the problems of landless and informal settlers and divert attention that makes such issues harder to address. It could also affect the government's commitment to increase land access for landless and marginalized peasants.
- vi. The Land Bank was implemented to solve problems related to urbanisation in the United States and Europe and to solve land and agricultural problems in developing countries such as South Africa. Therefore, without basic preparation and more in-depth study as to how and in what form this model can be beneficial, it is not suitable to implement in Nepal.

4. What Next?

The prevalent land management system in Nepal can be described as discriminatory and inefficient. The recent implementation of the **LANDex - global land governance index** reflected some of the most serious concerns: on community land rights and support for diverse tenure systems, Nepal received an index score of 25 out of a possible 100. Likewise, on the land rights of indigenous peoples, the country index was merely 19. Finally, of the ten thematic areas that were scored, protections against land grabbing was among the lowest, reflecting failures in the legal framework and implementation of existing laws to protect communities against such grabs.

What is more, the current land management system prohibits the tillers cultivating land for generations, showing those inefficient legal or regulatory frameworks.. Land has become less productive due to the dual land ownership systems such as Birta, Unregistered Tenants, *Ukbada*⁸ and so on. The LANDex indicator on productivity gap, likewise, showed that at a national level the gap between actual and potential yield for paddy, fish and vegetables was 54 percent. It is for this reason that the land system can be deemed unequal, as it safeguards the property of those who own it rather to provide justice to the landless, agriculture labourers and tenants.

The essence of progressive land reform is to ensure “land for the tiller.” The concept of the Land Bank, however, appears to be the complete opposite. Whether to provide land to those facing historical injustice or to create conditions where people may lose land they operate under traditional arrangements like sharecropping, etc. – these are the questions that have surfaced as prominent land and agrarian questions.

The concept of the Land Bank at its essence will serve to further commodify land . People holding large tracts of agricultural land are often employed in off-farm activities yet continue to retain ownership over this land. The Land Bank protects and promotes the vested interests of big landowners and, in this sense, cannot facilitate the important process of establishing tillers as the

8 A type of land ownership abolished in 1964

owners of agricultural land. Reflecting on the above, the following points must be stressed in the present context:

1. First and foremost, we must address the pending question of progressive land reform, for which the Constitution provides a solid roadmap: the issue has been raised and left unresolved for the last seven decades. The Constitution explicitly mentions the application of "scientific land reform" by ending dual ownership over the land for the benefit of peasants and to discourage absentee landlordism (51, E, (1 & 2). In line with this Constitutional provision, related concerns over tenancy land should be settled. The concept of the Land Bank is positioned in opposition to the provision that discourages absentee land ownership. In order to provide land for housing and agriculture to those people who were deprived of land rights in the past, the task of the LIRC needs to be expanded effectively. Given the unsettled status of this historic task, we believe the backward-looking Land Bank should be abandoned.
2. As per the provision of the Land Use Act, 2019 (2076 B.S), a land use executing committee must be formed, a long-term vision document should be prepared, a land use plan should be formulated and implemented and land classification should be a priority at local level.
3. Because land tenure practices differ from place to place, it is not practical to implement "one-size-fits-all" policy or law across the country. In this situation, local governments must keep records of the land, the tenants, tillers, landless and land owners; diverse stakeholders should come together and discuss land use policy or regulations, prepare and implement a sustainable plan that best fits their local context. Land will be best used when specific rules, prepared through comprehensive discussions that reflect a unique context are applied.
4. The Constitution has specified the land-related responsibilities for which local administrative officials will be responsible. In such a situation, a Land Bank established for one specific purpose does not seem relevant. Alternatively, institutions that will be responsible for land-related tasks specified by the Constitution should be established at the local level. The provision of one or two additional human resources to existing institutions seems more practical than establishing the Land Bank.
5. The law that prohibits land being left fallow needs to be implemented effectively. If this law were effectively implemented, it would discourage the trend of land being left fallow. As such, absentee landowners would seek alternative ways to ensure that their land is utilised properly. Currently, adding additional structure with a large investment of state resources is not the best response.

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