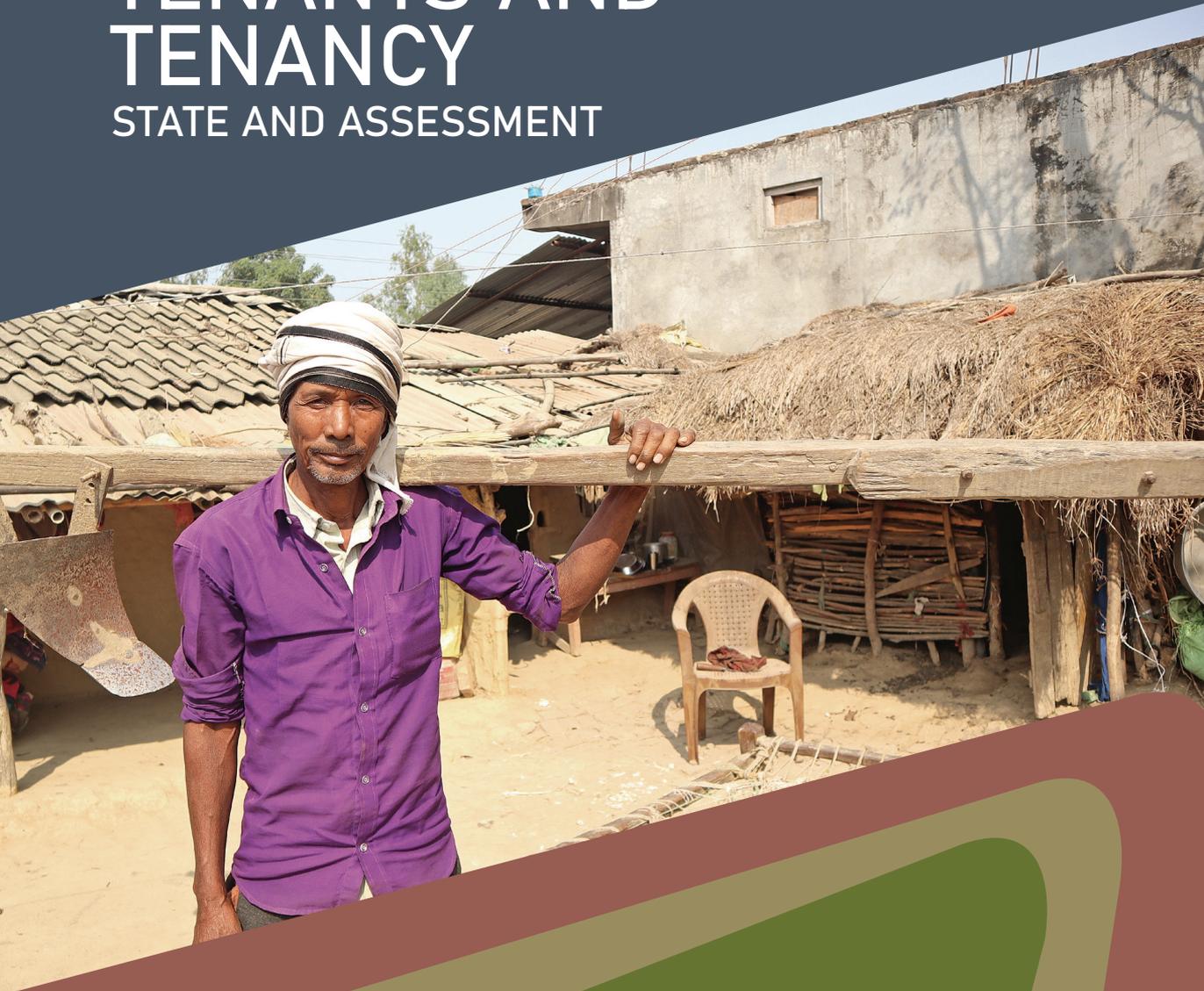


# TENANTS AND TENANCY

## STATE AND ASSESSMENT



*Bharat Shrestha  
Jagat Deuja*

*A Summary of the detailed  
research report in Nepali*

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“No man but feels more of a man in the world  
if he have a bit of ground that he can call his own.  
However small it is on the surface,  
it is four thousand miles deep;  
and that is a very handsome property.”

- Charles Dudley Warner, 1870



# Table of Contents

Foreword  
i

## SECTION 1

Background  
1-5

## SECTION 2

End of Dual Ownership, Land Ceiling for Tenants and  
Legal Arrangement for Rights  
6-10

## SECTION 3

State and Assessment of Tenants at Ground  
11-21

## SECTION 4

Policy Options to Favour Tenants  
22-24

Bibliography  
25-26

# Foreword

Land being a basic element, it is life, a power and, a key indicator of identity, wealth and means of comfortable entrance to prosperity. But, the landlessness is deeply entrenched and rooted in a long history of feudal land governance. Non farmers have controlled the considerable land holdings entrenching the classist nature of absentee landlordism resulting to a distinct class-based system that a tenant working as farming class though eligible for ownership rights are functionally excluded from such rights. The Land Act 1964 and its amendments have come into effect to protect tenants but the problems have not been solved.

In view of the government's call to register the tenants within mid 2021, this piece of work in summary translated in English version from Nepali was based on the detail survey oriented study of over 726 tenant farming households of 5 tarai districts conducted with the purpose of bringing a ground level fresh and actual data and information to support to the government in revisiting its Act, laws, policies and working modalities during the time of implementing the work of protecting the tenants.

On behalf of the institution and personally, I would like to thank all the tenant farmers who shared their precious with the study team to sketch out their real pictures. The tiresome effort of Kumar Thapa, Program Coordinator of CSRC, who lead the field activities and supported in the data analysis. He deserves special thanks. Without the honest and regular mobilization of the data enumerators in the study district, it would not have been possible to complete this study in this difficult time, so I am thankful to them as well. I also thank International Land Coalition (ILC) in supporting this work and, all professionals and ground level team members those involved in bringing the study result on time successfully. Thanks are also due to all the stakeholders supported to this study.

Prof. Bharat Shrestha, Ph.D  
Chair, College of Development Studies

May 2021

## BACKGROUND

### 1.1 The Context

The constitution of Nepal (2015) section (3) Article 16 has given every individual the rights to live and, the Article 25 also has given rights to earn property, use for commercial and other purposes by which they can earn benefits. It has aimed at protecting and promoting social and cultural solidarity, tolerance and harmony and unity in diversity by recognizing the multi-ethnic, multi lingual, multi religious, multi cultural and diverse regional characteristics. It also aimed to resolve for building an egalitarian society founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice by eliminating discrimination with commitments to socialism based on democratic norms and values.

Desired prosperity without social and legal reforms on land do not meet as expected. In absence of land access and secure ownership of the actual tillers, social justice would be a far-reaching dream perpetuating the food deficit and extreme poverty. The constitution in this connection has clarified to eliminate the dual ownership of land, demotivate absentee landlordism, aggressive reforms on agriculture with scientific land reforms. In fact, these are the issues remained unresolved for decades. Whilst the tenants<sup>1</sup> and landless who have been in struggle for over seven decades for land reforms and tenancy rights, all the political parties have had been committed to *jasko jot usko pot* meaning land to actual land tillers in every election but has left the same problems as it was before.

The Land Act of 1964 was a milestone in the list of the acts and rules of Nepal. Initially, the act remained quite effective in its implementation, however over

.....

1 Tenancy rights and tenants (*mohi*): The 1964 Land Act defines tenants as persons or families cultivating the land other than their own under certain conditions. Likewise, tenancy right means legal rights of the cultivators over the land that they cultivate. This Act underwent 4th amendment in 1997 and 5th amendment four years later (2001) denying tenants their legal rights. *Guthi Sansthan Ain* (*Guthi Corporation Act*), 2033 (1976) recognizes the tenants' right to land in its first amendment (1984), but the legal provisions have not been implemented properly. As of 2051 BS (1995), there were 0.45 million tenants, who had not been given their tenancy rights.

the years; its effectiveness remained almost nonexistent despite the Act was aggressively enacted with objective of payment of only 50.0 percent kut meaning rent by the tenants to landowners by which the tenants felt comfortable to some extent. However, the government failed to confiscate over ceiling land and compulsory saving as was aimed in the Act. The dual ownership of land and the problem of tenants is as it was for last 57 years.

One of the prime objectives of the land Act was to improve the life of the actual tillers for which the implementation of land administration had to be rigorously enhanced to socially and equitably distribute the agricultural land as was the sole plan and strategy of the government. However, it has not been fulfilled as planned for the reason that the dual ownership of land still exists and the land reform office as yet has not been successful to resolve the issue. Every tenant is entitled to obtain half the land they tilled as their rights as the Act has stated the tenants farmers who had been tilled the land for generations has yet been expecting if they can till the land as their own.

Of the total physical land, 28.0 percent is estimated to be suitable for agriculture. Current land administration systems address only the formal land relations and ownership. Therefore, the current system does not keep the record and document the informal and legally not registered land relations. Land of this kind is estimated about 25.0 percent of over 10 million parcels. After the restoration of democracy in 1990, the tenant farmers were much expecting of having their rights secured from new government and new political environment despite of less attention given to them. They were even more active in increasing the production from the land they tilled. However, the clouds over their heads remained contorted. Tenants those failed to seek their rights yet expelled, end of dual ownership remained only in the papers and several benefits stated in the Act and laws became ineffective putting the tenants into hopeless mood.

It is believed there are a large number of tenants who have not officially registered their tenancy rights with the government. If these tenants resort to legal provisions they will be entitled to one half of the land that they cultivate. Before the fourth amendment of Land Act 1964, one would need to submit receipts proving that the tenants were paying in cash or handing over kut, minimum share of production to the landlords. The amendment required tenants to submit proofs of their tenancy rights within six months. However, this new legal provision was not brought to the public attention, systematically denying tenants the opportunity to register their tenancy claims over land. Now they cannot do so as the provision has been abolished. This was done so to abolish the dual/joint ownership of the land – by the landlord and the tenants. The main issue in Nepal with regard to land reform is the tenants' rights. Neither all tenants have been registered nor have those registered got their share of land.

The fourth amendment (1997) in the land Act prohibited the entry of new tenants further but aimed to complete the sharing of land between landlords and tenants within 2 years. However, for 24 years this is going with little progress. The Ministry of Land Management, Cooperatives and Poverty Alleviation (MOLMCPA) issued a public notice in 2019 to land owners and tenants telling them to end dual ownership of property within one year. The ministry adopted this measure with the aim of boosting the productivity of land and ending hassles between land owners and tenants owing to dual ownership of property. Government wanted land owners and tenants to end dual ownership by dividing half of the land between them as per the law encouraging the two parties to reach a deal on the partition of land property without imposing decision from the government. Despite the notice issued and promises made by the government, time to accomplish has been postponed year after another leaving the tenant into perplexed. Sharing of land is not just setting a side of the dual ownership; rather it is to bring the land on the ownership of the tenants for which they need to be oriented and made aware. The safeguard of the government to a tenant is must and to improve the efficiency of the local land offices need to be revamped.

## 1.2 The Problems

Tenants have had been encountered the problems of several nature that they never thought of. During the time for registration of tenants from 1964, the landlords played several fraud roles; they did not show the actual tillers to the government officials, put the tenants in shadow and showed other fake tenants. Thousands of tenants could not register. New tenants were checked in 1997 when organized tenant's campaign after political change of 1990 took a momentum. Six months time given for new registration was a cumbersome and obligatory process where both landlords and tenants had to jointly submit the application with certification from local government. The Act and law is there but they remain ineffective by which the tenants are expelled over the years showing various pretense.

Tenants are forced to agree with money by the landlords than the share of the land which is a life for their livelihood. This is not the objective of the constitution and of welfare society. Both registered and non registered tenants have filed the cases for their rights either with the court of the land office but the dates to them are given for years and decades. Even for the change of the tenant's name transfer they are given enormous troubles. The lack of efficient governance of land administration, several years have been taken by the officials even for the work that may take two to three months. Not only high costs are involved but also the psychological stigma has to be borne by the tenants. Days and years are passed that government has been showing hopes to the tenants by issuing notices for registration but there are the processes continued on time lapses and additions.

There are several other problems associated with tenant's right that require immediate solutions for their social justice on land they till.

### 1.3 The Rationale

The history says the culture of landlords and tenants was phenomenon that came in different modality with lease and sharing along since the time immemorial. It looks both parties benefited in the sense that those not having land or less land could cultivate the land belonged to others for survivability and the land owner who could not cultivate on their own but is cultivated by other and get production from them. Yet, if viewed from the wide perspective, the system enhanced accessing land to poor, helped change in their socio economic justice and, the land itself did not remain fallow.

Over the time, the relations between these two parties have gone through many upheavals and, these days the problems of justice, change and livelihood. Leaving the land for them is leaving the breath. There are the Act and laws but are remained ineffective for reason mainly of weak administrative system and irresponsible officials, politicians and policy makers who always remained self centered and greedy.

Dual ownership over agricultural land has been considered as one of the main obstacles to the people centered land reform. Registration of tenancy rights in 1964 was stopped in 1997. And the person who failed to tenancy registration formally and who became tenant after 1997 could not be eligible to claim tenancy right. All of the tenants have not yet received their rights and their condition is not well known among the policymakers and development partners. Meanwhile, land and agrarian movement in Nepal have a kind of consideration that without concluding the tenancy land rights, land reform could not have a good start. Therefore, it became important to carry-out in-depth action research study at the ground level of the tenant's conditions of registered and non - registered to inform for policy decisions<sup>2</sup>.

### 1.4 The Objectives

Whatever the reforms either of land or agriculture is envisaged, the main purpose is to improve the livelihood with no poverty of tenants, small marginalized, women and dalit farmers through the secured access to land and, thereby to increase production and productivity by enhancing access to information and technology and honest support to their psychological change. With this contextual purpose, the prime objective of the study was to sketch out the way out and methods for policy adoption for ending up of the dual ownership for tenant management. In order to achieve this, identification of multi aspects problems, state and status of tenants at ground level was set. The study focused essentially on tenant's right.

### 1.5 The Methods

By nature of the work, it was indispensably essential to go for reviews of the system historically so as to understand the set of system in the past and intermittent changes occurred and its effect on the tenants. Secondary sources of information were prime basis for review particularly of the history oriented reports, the Acts and laws and authentic documentation. For ground studies, the action taken was primarily of the tenants – registered but not taken the land and non-registered but tilling land since generations. How such cases happened and why they yet remained as the tenants was the concern.

The Abhiyan Nepal, CSRC and NLRf teams of NES member had has been working with them for years and was much familiar with the tenants. The team has kept the census records of the tenants. Followed by a series of discussion at the center and at the ground, five districts of tarai – Morang, Sunsari and Sarlahi of the east and Dang and Banke of west were selected based on the intensity of the tenant's population. Census form and pre-structured questionnaires for both types of tenants were used for interview of 131 non- registered and 595 registered tenants. Other forms of survey like focused group discussions, key informants and participants' observation were also conducted through the ground level facilitators with supervisions from officials. However, several obstacles were encountered during survey period due mainly to the fear of COVID 19 infections, the intermittent lockdowns and its effects on mobility because of transportation.

2 This action research study on Tenants and Tenancy: State and Ground Assessment is being counted under the Asia NESCBIs and Regional Engagement of the International Land Coalition (ILC) for supporting National Engagement Strategy (NES): a multi-stakeholder partnership for people centered land governance. CSRC has been hosting ILC/NES Nepal and facilitating the implementation of it in collaboration with the ILC's national members and other development partners.

## END OF DUAL OWNERSHIP, LAND CEILING FOR TENANTS AND LEGAL ARRANGEMENT FOR RIGHTS

### 2.1 The Need to End of Dual Ownership

The condition of dual ownership is not agreeable in the sense of social justice and socio economic enhancement for prosperity. The Act itself, for this reason, has made the strong provision of sharing the land between landlords and the tenants. Dual ownership has not given the rights and protection of the tenants. The case has been that for whom the Act was enacted, they are expelled from the rights. General assumption is that the land under tenancy does not have desired or low production because of the fact that the tenants without sole ownership of land did not become psychologically prepared, efficient and capable enough while at the same time the landlords put less attention to them. As a result, the efforts put through precious labour of tenants have become almost useless. There are, in most of the cases, the relations between the landlords and the tenants did not seem harmonious but rather more enmity which has brought high mental torture among the poor tenants. It is a moral, ethical and humanitarian issue.

After 1964 Land Act, not only the government's every five year development plans have brought forward the policy, programs and strategies but also the major political parties in their election manifesto have agreed and committed to abolish dual ownership at the most earliest possible. But who cares, this has been a routine both of the government and the parties when they are on power. Even more than this is that the each of the high level land reform commissions of 1995, 2010 and 2012 prioritized abolition of dual ownership and lastly the 8th amendment of the Act has focused its program on ending up of the issue on dual ownership. Unless the problem of double ownership on same land is not solved, the welfare society envisaged by the constitution remain far to reach. Poverty needs to be eradicated from the ground level where the reality can be counted or otherwise, it derides at national so called development.

### 2.2 Land Ceiling for Tenants

Land ceiling was fixed from 1964 Act and, different commissions and the government during this period made changes but none of them are found to have successful in confiscating the over ceiling land. Till date, it has just been the paper work and a political agenda.

Land ceiling as fixed by the Act and proposed the commissions at times of political changes have different meanings and conditions. However, the land ceiling to the family as proposed by the commission of 2010 was seemed to be quite calculative and scientific according to land classification though it did not come into effect (Table 2.1).

Table 2.1: Ceiling of land According to Land Classification (area in ha)

Family/ Land	Best	Good	Two Crop (medium)	One Crop (Marginal)	Upland (Pakho/Stony)	Homestead + for Residence
Single	2	2.5	3	3.5	0.25	0.1
Joint	2.66	3.33	4	4.66	0.33	0.103
Large	3.33	4.16	5	5.83	0.41	0.106

Note: 1 ha = 30 kattha or 20 ropani

Source: High Level Land Reform Commission, 2010

Notwithstanding the inefficiency in an investigation of overall work on land ceiling, the 8th amendment of the Act has clarified on issue of ceiling on land under tenancy. According to the amendment, if a land is under tenancy that can be shared and the tenants can take the land of their portion. For this reason, the tenants had troubles in the past. It is interesting to note that the provision of land ceiling for tenants has been taken out or in other words, the ceiling of 2.72 ha of land (4 bigha) eligible for tilling in the past has been withdrawn. If the tenants left tilling land under tenancy on their own will, half of the land goes the landlord and another half to the government. It is in favour of the entire poor tenants.

### 2.3 The Legal Arrangements for Tenancy Rights

The Land Act of 1964<sup>1</sup> has given enough space to safeguard the tenants who are actual tillers. With the promulgation this Act, the implementation of sharing land

1 <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/the-lands-act-20211964>

between the landlord and the tenants were on war footing but after some years this remained ineffective for many reasons. The different amendments on the Act yet have protected the tillers but the implementation of the activities has been prolonged for last 25 years. Major provisions made in the Act in relation to the legal arrangements for tenants' rights are spelled out in Chapter 7.

### (a) Provisions for Tenants

In circumstances where tenancy right is acquired the Act defines (1) a person who as a tenant has been cultivating a land that belongs to any landowner until the date of commencement shall acquire tenancy right as referred to in respect of land and (2) except where tenancy right is acquired, no person who cultivates/tills a land belonging to any landowner on any terms and conditions shall acquire tenancy right over that land. With regards to the rights and obligations of tenant, the Act has spelled out that the tenancy right of a tenant in respect of a land which tenant has tilled shall, after tenant's death, devolve on any one whom the landowner trusts living in same family of tenant. The tenancy right is not liable to be purchased or sold or be subject to acquisition by way of gift, donation or other means whatsoever, and shall not be auctioned. If a tenant has erected a concretely built house by obtaining consent of landowner or since ancient time, tenant may sell or otherwise convey his/her title to land of house and premises; and provisions vis-à-vis upper ceiling shall not apply to such land.

### (b) Sharing Land to Tenants

The authority may allocate land subject to tenancy right to landowner and tenant. The provision of joint application by landowner and tenant is stated (1) if both landowner and tenant of a land subject to tenancy right intend to allocate and exchange land subject to tenancy right through their mutual consent or if either of them intends to convey whole land to landowner or tenant, as case may be, in consideration for an amount equal to value of land which s/he has agreed to acquire at prevailing rate and get records of tenant crossed off, they shall make joint application to prescribed authority setting out all details related therewith and enclosing evidence available to them and (2) if any application is made and, if on examination of the evidence attached found correct, it is reasonable to allocate the land as requested or to maintain the whole land in any one of landowner or tenant and cross off the records.

If both landowner and tenant fail to reach a mutual agreement and either landowner or tenant makes an application, the authority shall subpoena the landowner or tenant and examine necessary evidence if so required and allocate

the land proportionately to the landowner and the tenant on pro rata and cross of the records. An application shall be made within 6 months. If any one of landowner or tenant fails to make an application for allocation of land within time-limit, the authority shall examine inventory and the evidence to the extent available and allocate the land subject to tenancy right pursuant to this Act within 2 years.

In relation to the powers to set title to land in name of only one person out of landowner and tenant, the Act describes as (1) the authority may make decision to set whole land subject to tenancy right in the name of anyone - landowner or tenant - agrees to relinquish whole land belonging to his/her portion by receiving an amount equal to value of such land at prevailing rate but if the area of land becomes less than minimum area prescribed for building a house therein in an urban or town-oriented area or has no land at all, priority is being given to such landowner or tenant. If there arises a dispute as to whether any land is of an "urban area" or "town-oriented area", value fixation committee<sup>2</sup> shall decide that dispute (2) where the whole land is to be maintained in the name either landowner or tenant or where on maintaining the land in the name of the tenant, there is less land on the part of the landowner, the other party shall provide an amount equal to the value of land to which the landowner or tenant on whose part no land has been so maintained at all is entitled or on whose part less land is maintained at prevailing rate.

### (c) Termination of Tenancy Rights and Punishment

How the tenancy right terminates according to the Act is that (1) except for the destroy of crop or non-yielding due to act of god, if the landowner makes a petition that the tenant has failed to pay the rent, the prescribed authority may issue an order to expel such tenant (2) where the landowner makes an application in any of the following circumstances, the Court may issue an order to expel (evict) the tenant from the land: (a) where the tenant has knowingly done any act which decreases the value or crop of the land or the value or crop of the land has decreased due to the tenant's failure to take reasonable care, or (b) except for a circumstance beyond the tenant's control, the tenant has not cultivated the land until one year or

.....

2 A value fixation committee consisting of the following members shall be formed in every district to fix the value of land: (a) Land Reform Officer or Land Revenue Officer in a district where Land Reform Officer is not available -Coordinator (b) Chairperson of the village development committee or mayor of the municipality where the land is situated or Vice-chairperson of same village development committee or Deputy Mayor of same municipality as designated by them -member (c) Ward member of concerned ward where land is situated -member (d) Officer level employee representative of the District Administration Office -member (e) Land Revenue Officer in a district where Land Revenue Office is situated -member.

The committee shall determine the rules of procedures of its meeting on its own. Likewise, there is a power to make provision of amount for which they may on its own or through any financial institution make provision of necessary amount of money to the landowner and the tenant in order to encourage them to purchase such land as held in each other's part following the allocation of the land between landowner and tenant.

has neglected in the cultivation and, (3) the prescribed authority may also require tenant to pay the rent, as well, to the landowner. Where a tenant has to be expelled, an application shall be made within following time limit, no application shall be entertained thereafter. Time limits are (a) within 35 days after the date on which the actions have been done or performed (b) within 35 days after the elapse of a year and (c) within 30 days after expiration of the time limit prescribed.

#### (d) Inventory of land and Punishment

In maintaining inventory of lands, landowners and tenants, (1) landowners and tenants and the issuance of the certificate of tenancy right to tenants shall be as prescribed. All the acts and actions done and performed by government in respect of making of such inventory and the issuance of the certificate of tenancy right prior to commencement shall be deemed to have been done and performed pursuant to this section and, (2) powers to be exercisable and procedures to be followed by government or by authority empowered by government shall be as set forth in Rules framed under this Act, in case of those matters set forth therein, and shall be such, in case of matters not set forth in such Rules, as may be exercised. A tenant shall be entitled to have the tenancy right only over the land not exceeding the upper ceiling up to which the tenant may till<sup>3</sup>. The cases on acquisition of tenancy right or its entitlement is that the prescribed authority shall settle disputes filed on acquisition of tenancy right or entitlement to tenancy right over any land a time limit of up to 15 days shall be given to concerned person to allow tenant who has been ascertained as per decision made by prescribed authority to use/cultivate land.

The provision of punishment is there in the Act. If a landowner forcefully evicts or expels a tenant from land being possessed or the tenant from land being possessed by him/her by fraud or deception or dishonesty in any other manner shall be punished by order of prescribed authority. In the event that the Court holds landowner guilty order shall also be issued in the name of the landowner that the tenant be allowed to again possess and use the land, and compensation be paid to tenant for illegal eviction or expulsion by landowner of tenant from land, according to tenant's share of crop which would accrue to tenant if tenant was allowed to possess and use the land. The Court may also require tenant who has violated has to pay to his/her landowner such compensation as the Court deems appropriate. Prescribed authority may punish a landowner who fails to give information and a tenant who violates. The fines seem very nominal given the prevailing market value. In whatever of charges of any case, the amount does not exceed one thousand rupees.

.....  
3 The clause is withdrawn in 8<sup>th</sup> amendment of the Land Act 1964 or otherwise it was 2.72 ha or 4 bigha as land ceiling for a tenant.

## STATE AND ASSESSMENT OF TENANTS AT GROUND

### 3.1 About Tenants

Prior to 1997, some 1820 thousand applied with their name as tenants out of which 1555 thousand were recorded but 470 thousand obtained the certificates. Based on this certificate, those obtained the certificate had to get half of the land they tilled but only 40 thousand is supposed to have owned their land. It is found that the landlords expelled the tenants during this time and the registered tenants now is recorded at 119 thousand whilst the tenants record of 1995 was 264 thousand and the land they tilled was about 16,728 ha. The fourth amendment of Land act 1964 checked the tenants' rights further but the tenancy till date had to be shared fifty - fifty between the landlords and the registered tenants. However, this has not happened despite the Act and rules permit to do so. By such situation, the registered tenants are in legal injustice in addition their socio economic destruction.

Notwithstanding the government's call in couple of times notifying to register by the landlords and the tenants together for sharing the land under tenancy rights, it has not been materialized leading the tenants to confusions and grievances. This situation has further led the tenants to the pressure of the landlords to expel from the rights.

According to the records maintained by the Department of Land Management and Documentation (2018/19), tenants not truly recorded are 11 and, no tenants districts are 22 out of current 77 districts. There are 10 districts where tenancy records are heavy (Table 3.1) in both hills and tarai districts fall within these districts.

Table 3.1: Distribution of Tenants in Major Districts

Districts		Number of Tenants	Distribution (%)
Hills	Bhaktapur	56476	22.7
	Kathmandu	51206	20.6
	Lalitpur	21640	8.7
	Nuwakot	10973	4.4
Tarai	Jhapa	41854	16.8
	Morang	22969	9.2
	Siraha	18600	7.5
	Banke	11346	4.6
	Bardiya	6895	2.8
	Dang	6811	2.7

Source: Department of Land Management and Documentation, 2018/19

Difference between the tenants of hills and tarai and especially between the Kathmandu valley and tarai tenants is that of their dependency on land cultivation and livelihood system. In Kathmandu valley, tenants in general seek for obtaining rights of land and use land for commercial purposes. In the hills, it looks something difference than in Kathmandu valley, they go for both – sale of land in high price or cultivate depending upon the location. However, in tarai tillers they till the land for survivability to keep their family free of starvation. Therefore, it solely depends on land and, the land ownership fully indicates their socio economic and cultural life. For this reason, the tenants in the tarai keep tilling land despite of many hurdles, grievances and pressures disrespect from their landlords.

According to the records available from the department, total number of tenants fixed was 275.4 thousand. Of the total 76.4 thousand who did apply for rights, 63.8 thousand is to be finalized. There seems however, no actual number of tenants yet recorded. Whatever the number of tenants to be solved with their rights, it needs no time work of the government. At least, there must be over 100 thousand tenants who need immediate action of the government.

In what state do the tenants survive is a critical concern? Therefore, the efforts has been to evaluate the situation of both registered and non registered tenants at ground level of five districts –Sunsari, Morang and Sarlahi of the east and Banke and dang of western tarai. Firstly, the tenants who had have been tilled the land after 1997 but not obtained the rights termed as none registered. Also who had been tilled the land before 1997 but not were able to register their names as

a tenant was taken as non registered tenant. They were visited in Bake, Dang, Sunsari and Morang.

### (a) State and Assessment of Non Registered Tenants

A total of 131 tenants households were visited in Baijnatha Rural Municipality, Banke, Rapti Rural Municipality Dang, Inaruwa Municipality, Sunsari and Sundar Haraincha Municipality, Morang with population of 974 having almost equal proportion of female and male. Tenants those cultivating land that belong to the landlords for last 30-70 years had their own land in a total of 62.1 ha out of which 55.2 ha was low land. Tenants surviving in such aggravated situation cultivated 1.7 ha others land on an average. The tenants cultivating others land over 50 years was reported by 106 households. They had cultivated such land over 3.5 times compared to their own. It showed a large portion land they cultivate was of landlords on half sharing basis as reported by 77.8 percent. However, 76.3 percent tenants had no evidences of tiller's paper or receipt. For various reasons, they failed to take or keep such paper which is indispensably required during the registration process to get their rights. Illiteracy was one reason why they usually fail to be in strong side for their rights. Majority of tenants (75.6 percent) were economically active and this was why they were able to cultivate others land and can go for wage labour for survivability. However, one aspect that favour tenant was that 78.0 percent does have citizenship certificates and 19.0 percent possessed birth certificates.

Some 45.0 percent tenants had no house and homestead on their own and, those who had houses (54.9 percent) were either residing in the village blocks or in the land belonged to the landlords. According to survey, the tenants even said having their houses were shanty and made out of mud so, majority of them had no pakka house.

About 73.3 percent non registered tenants were not aware of their rights and, those who were found to be aware were also reported to have known only after they started tilling the land. Some 54.3 percent knew through their neighbors. While the tenants were unaware of their rights, the delays and cumbersome processes of the government offices and the trickery and fraud of the landlords, has put the tenants in a situation of high risk and merciful life. Tenants about 29.1 percent thought that the efforts they made to register tenancy could not be successful because of government officials, 22.1 percent opined due to landlords' fraud and the rest by their own caused mainly by not having the proof of payment made to the landlords.

Important indicators that need to assess the state of the tenant's households were their food status. Some 37.4 percent households had food sufficiency for a year

round but they were of small family, had their own land in addition to others land they cultivate. As indicated in Table 3.2, the households who survive by their production were 37.4 percent.

Table 3.2: Food Consumption Status

Month	Baijhnatha RM		Rapti RM		Inaruwa Mun		Sundar Haraincha Mun		Total	
	No	%	No	%	No	%	No	%	No	%
Tenants	62		19		10		40		131	
0-3	4	6.5	4	21.4	1	10.0	1	2.5	10	7.6
4-6	13	21.0	5	26.3	2	20.0	1	2.5	21	16.0
7-9	40	64.5	6	31.6	2	20.0	3	7.5	51	38.9
10-12	5	8.1	4	21.1	5	50.0	35	87.5	49	37.4
<b>Coping Strategy</b>										
Total	57		13		5		5		80	
Daily Wage	29	50.9	8	61.5	2	40.0	5	100	44	55.0
Share Cropping	25	43.9	4	30.8	1	20.0			30	37.5
Foreign Job	3	5.3			2	40.0			5	6.3
Business			1	7.7					1	1.3

Source: Field Survey, 2020

How the food shortages were managed and, what coping strategies that the tenant farmers followed to keep their family in survival were a concern. About 55.0 percent farmers used to go for wage labour both in agriculture and other activities like construction etc wherever they get higher wages. What this situation indicates that the tenants farmers in absence of commercial agriculture in others land caused by the lack of improved seed, chemical fertilizers and insects and pests, their production just remained as subsistence and that was the reason why they go for wage labour work to manage food deficit. There were 37.5 percent who did share cropping to overcome food deficit.

One interesting query was posed to the tenant farmers if the production increase or decrease in the land they till. In response to the question, 62.6 percent opined that the production increases if the land was good in terms of fertility and the inputs were applied on time, the production go high but another 37.4 percent farmers had experience that the production did not increase because the seed was not good and the other input were inadequately applied.

## (b) State and Assessment of Registered Tenants

Among the registered tenants scattered in all five sample tarai district, some of them have obtained land and majority are yet tilling the land but have not obtained for various reasons. A total of 595 households were visited as for interview by which the population estimated was 4178 where the composition of male ratio was 58.4 percent. Since the economically active population was as high as 77.7 percent, the labour availability in tenant's households did not seem to be inadequate while 62.1 percent labour depend on agriculture as their prime source of income and 9.7 percent was found to have involved primarily daily wages either in agriculture or other sector particularly the construction and factories. Literacy of the tenant population is estimated only at 35.7 percent.

As per the survey result, total land tilled under tenancy right was reported at 762.2 ha or an average of 1.3 ha out of which 96.4 percent was low land khet. However, out of total land under tenancy 56.6 percent land was reported to have shared between landlord and tenants but only 39.7 percent tenants had obtained the land as their right. Receiving cash than the land was also found prevailed which looks against the tenant's desire who had been cultivating land for 80 years; 30.1 percent reported that they had been tilling land for over 50 years. For 61.7 percent tenants, it took over 50 years to register as tenant and, for 83.4 percent who spent the money in the process of sharing the land was estimated at least 100 thousand.

Tenants those having own land was 54.8 percent, homestead in own land (58.2 percent) and houses in the land of village block was 0.8 percent (Table 3.3). Average land holding of those having their own land was 0.6 ha which was on their name since prior to the time becoming the tenant. Some 42.7 percent tilled the land under tenancy from their ancestors and, 71.8 percent tenants had tilled 1.6 ha on an average out of which 88.1 percent was low land khet.

Table 3.3: Land Ownership Details of Tenants

Details	Baijhnatha, Banke	Rapti, Dang	Iswarpur, Sarlahi	Inaruwa, Sunsari	Sundar Haraicha, Morang	Total	
						No	%
Total Tenants	128	151	112	59	145	595	
Own Land for Farming	110	78	61	34	43	326	54.8
Home in Own Land	91	80	83	51	41	346	58.2
Home in Tenancy Land	4	7	5	5	4	25	4.2
Home in Village Block	5					5	0.8
Land Area (ha)	96	30	32	16	34	208	

## Land Details Before and After Tenancy

Details	Total		
	Number	%	Area (ha)
Land Having Prior to Tenancy	326	100	100
Low Land Khet	284	87.1	87.1
Upland Bari	42	12.9	12.9
Land Tilled since Ancestors	427	100	679.4
Lowland Khet	345	80.8	604.3
Upland Bari	82	19.2	75.1

Source: Field Survey, 2020

In all districts surveyed had the system of payment to landlords but the amount and methods were different. About 29.7 percent said that both landlord and tenants were agreed on payment but 9.6 percent reported only the landlord made the agreement. Payments were made by 92.4 percent tenants out of which 26.7 percent had paid since last 4-5 decades. Of the amount paid in cash or grains to the landlord, 37.3 percent claimed that the landlord used to increase even half of what was paid last year and other 20.4 percent tenants said that it was 10.0 percent annually. In response to what was the amount of payment of tenancy, 43.3 percent had paid fifty of production, 42.2 percent paid 2/3 and other 14.6 percent paid 3/5. However, by law the payment should not exceed half of the total production.

Tenant farmers must have receipts of grains or payments made to the landlord, or have their names on land certificates before they file a case to claim a part of the land they tilled on. They often do not have these documents, and may lack the resources or the knowledge to take on landlords. The CSOs have been organizing landless tenant farmers into community groups and helping with documentation. The process may take years with powerful landlords mounting obstacles every step of the way.

The tenant farmers (64.0 percent) those who got the land of their portion under right had continued cultivating the land of the landlord's portion as found somehow comfortable with the same landlord but 36.0 percent left as they got their own land and 30.5 percent denied cultivating as the landlord sought for high payment or the land was sold.

Did the tenants have their own house? If yes, of what kind and if not, where do they live was also prime concern. On this concern, some 14.3 percent were homeless and they stay at landlord's premises whilst 85.7 percent had their home but out of that 71.6 percent tenants had kachhi house of mud and bamboo.

One can imagine the houses built in tarai area mostly of shanty in nature of construction.

Upon ownership of land they tilled after a hard struggle, the tenants were happy to be a land owner and felt secured which had motivated them to cultivate their land following the diversified crops. However, major crops were as usual basically grown of paddy, wheat, and maize. They had changed cash crops either sugarcane or in recent years had gone with the vegetables both seasonal and off season. A majority of them were in opinion that they were free to select the crop and able to grow what they need for household consumption for which they had to depend on market. In addition to keeping big and ruminant animals, each of the houses had gone to raising poultry and docks. Nevertheless, the sales of livestock products were found nominal.

Food consumption of tenant farmers before and after their ownership of land under tenancy was considerably different. It was their motivation to work hard keeping their land fertile. Table 3.4 indicated the food availability round the year while they were tenants was just 12.0 percent which went up to 22.3 percent when they become the owner of the land. This was incredible change in tenant's status.

Table 3.4: Food Consumption Scenario

Food Availability (in months)	As Tenant	%	As Land Owner	%
0-3	33	14.7	25	11.2
4-6	50	22.3	48	21.4
7-9	61	27.2	56	25.0
10-12	53	23.7	45	20.1
12+	27	12.0	50	22.3
Total	224	100	224	

Source: Field Survey, 2020

Even better situation was of the 12+ months where some of the tenants had started selling their crops after consumption. It is to be noted that the tenants even after having ownership of tenancy land they used to cultivate others land on share cropping basis (32.4 percent); those who had food deficit had to go for wage labour to earn for food (28.7 percent) and, about 7.0 had debt for food management. Over 90.0 percent of the farmers had started eating 2-3 times a day.

While 19.7 percent farmers took part in the training related to crop cultivation, livestock raising and group saving and mobilization which had gone up to 41.2 percent when they become the owner. The reason behind this was the fact that

the primary criteria for selecting the participants was only of the land owner just not to spend training cost for those who do not involve in the activities trained in future. Access to commercial and micro finance institution was said to have increased. While 22.0 percent had loan borrowed on an average of Rs 30-40 thousand, 7.9 percent had borrowed on an average of Rs 40-50 for livestock and poultry keeping and cash crop cultivation. The tendency of borrowing informal loan in high interest for household consumption was found to have decreased with reason that they experienced of increased production, time used for wage labour which was controlled by landlords in the past and cultivation of vegetable and other cash crops around the homestead.

Much comfortable was felt by the tenants those who got the land. There was, as they overwhelmingly shared, their joys that being free from tenant means they had a great victory of the battle. They can have now long breath, can share joys and grievances. More importantly, they were not in cage in landlord's control to serve by all family members. They had started consultation of crop selection, market search of products, sitting together for community plan, group saving and mobilization, talking about daughter's education, seeking better employment, accessing to where they desired and respect between and among the women and men in the society. Feeling respect to each other was the foremost culture they got from freedom.

Although the tenants did not like to recall the situation of times they were tenants, over 70.7 percent of them repeatedly claimed they experienced injustice in every aspect like they got no remuneration or recognition according their labour use and 97.2 percent were even now on fear of the words of the landlords used to say. Harassment and assaults to the women were the unforgettable oppression during the time. Their family in fact was treated as the slaves where all family members even the infants had to serve their family.

As known, the objective of the Act was to protect the landless tenants and poor by accessing them to the land they had tilled but while the registration and sharing of land between two parties has been prolonged, the landlords had have been maneuvering with the tenants of hopes and hassles. They have encouraged more on cash payment to the tenants than sharing of land. This is against the core norms of the Act. Tenants require land for maintaining their lifelong livelihood system than not just to legally separate from dual ownership. Tenants were asked what they opine in this regard. A great majority of 82.2 percent were in side of getting land than money. Money does not count their labour mixed up with the soil they had tilled. Therefore, secured land access is the non controversial option of the poor tenants.

### (c) Say of the Source: Registered and Non Registered Tenants

“We have to fight the battle hard to get the land that we have worked on for so long. Only having land in our own name can give us the status, power and recognition in the society” says all of the tenant farmers. Yet, the “women position vis a vis land need to be significantly high priority” they added.

While Land Act of 1964 has given tenant farmers the right to own land. However, millions of poor tenant farmers and lower-caste dalit laborers have remained landless. Landlessness and an abusive tenancy system helped fuel years of conflict. About a third is landless, with millions classified as semi-landless because their holdings are so small. The constitution, gives land ownership rights to landless dalits who are largely unaware of their rights and face daunting challenges in asserting their claims. “They have been tilling the land for generations, yet they have no security, no status, and no recognition.

Following are some the acute and worth noting issues that the tenant farmers shared their experiences with the survey team. These are the ‘says’ recorded from their mouths.



their family in each and every activity without wage.”

”I am **Ramchandra Chaudhary**, the fourth generation registered tenant of Dang tilling nearly 0.69 ha of land that belong to Durga Bhusal. We are now four brothers jointly cultivating different crops. We used to pay 1/3 at the outset but now we pay half of every produces. I have now heard we can get half of the land but the landlord threatens if we ask for. Our family members need to serve



price but we have not accepted. Four years ago we again filed the case against both the seller and buyer of that land. It is on process; don't know what will be the result. I guess this must be the fraud from land reform office.”

”I got land ownership certificate after filing the case after 9 years but I have no land said **Radheshyam Chaudhary**. We tilled some 2.72 ha land as tenant. After we got our share of land on paper from the court, the landlord did not allow to till. Advocate says we can get but the land we tilled has now sold by landlord. He is now trying to please us to pay cash from the valuation of the then



“Me **Pachhu Mushahar** of 72 years from Sarlahi. I used to look after the livestock of the land lords since my forefathers was the tenant. After demise of my father, we had no good relations with the landlord and left his place. Since we had no place to stay, one local priest who was so kind enough to us bought a small piece of land for our stay. We heard the landlord donated the land we tilled to the library but while they were in official process of transferring, his father’s name was found documented as tenant. The process is now stopped and, we have filed the case and is going on but don’t know how long?”

”I am **Tulsiram Tharu** from Banke. My elder father Koju Tharu was a tenant of Prakash Chand who was given the shelter to stay on condition look after his farm land in 1965. As per the Act of 1964, land tilled by Koju was registered under tenancy but in 1974 he died and his wife died after 3 years. Since there was no claimant of Koju, me as the son of his younger brother with pressure from the landlords I left the land in nominal price of Rs 18 thousand only to him because I had no knowledge of tenancy right. I tried to transfer the tenants name but it’s on pending. Later it came to know that they had made someone fake claimant.



“From Banke, I am **Surajlal Tharu** tilling 1.02 ha land from 1980 but not registered. I also till land on share cropping. I did not know about tenancy. Now if I ask for the land I fear the landlord threaten me to leave the land but he did so how can I survive? I pay half of the crop but I have no receipt of payment. I am staying in his place as all my ancestors did. I fear to talk with him. “



”I am **Rajmati Chaudhary** from Banke. We are tilling little above 1/2 hectare of land since 1977 in the name of my father in law but we are not registered. We had gone to the land office once to know about tenancy but we don’t know how the landlord knew about our visit to the office. He showed us his anger, threatened to leave and threw all utensils. We are keeping silent now. I have very small piece of land so we can’t leave to till the land

despite of landlord’s anger and threatens. How can we eke out our living? He even counts the mango fruits we have planted in the land and my children are deprived of tasting the fruit.”

”Residing in Banke, I am **Gopal Chaudhary**. I am tilling about ¼ of a hectare



land from 1976 and paying to the landlords from 1996. I have not left paying rent even during high draught. We used to pay 1/3 of production initially but now it’s almost half. I have land certificate but the land has not been shared. Landlord lives in Kathmandu and, not been able to talk with him.”

Process of the ending up of double ownership, is said to have yet, ongoing but during this period of 24 years, there are critical evidences found that the entire landlords, with some exception, have played the roles in pleasing or threatening the tenants to expel from the ownership of land they have tilled. They are daring to do such wickedness by showing their power or influence and, by alluring the officials of the land reform and revenue offices in making the papers and justifying ill intended proofs whilst the tenants are expecting the kind intention of landlords and officials in getting as remuneration of their long years labour on soil and, roaming in and out of the court, land house and officials at the land offices. The question is whose reality counts?

## POLICY OPTIONS TO FAVOUR TENANTS

### 4.1 Conclusion

Land sharing between tenant and landlord does not only mean to finish the separation of double ownership from one to another but it is to assure the secured ownership of land to the tenants for whom the government needs to support and protect them. It being an important work in reducing poverty at ground, the efficiency and honesty at local land offices is must because the land sharing under tenancy is the subject of feeling and realizing the social structures embedded with sentiments and psychology. Government officials are required to be liable to its citizens especially the poor tenants who eventually respond to ground solutions for national problems. Just issuing the notices for applying to the offices for tenancy rights to the target group is not an end. Rather, for respecting their moral, humanitarian and ethical concern, the government in no time requires to finalize the issues of tenancy rights.

### 4.2 Policy Options Suggested

Reviews of the provisions in Acts and laws, field surveys and discussions held with the tenants and the authority concerned, following are some of the options suggested as policy options.

Tenants are required to pay land rents as kut at least half of the produces to the landlord. However, they are paying somewhere more than 50 percent of the total annual production of every crop produces. Paying such rent does not seem to be practical but the tenants are cultivating by their compulsion. The Act and law does not specifically speak about differences and discrepancies with regards to the problems faced by the unregistered tenants and share-croppers. Let policy be considered for the amount of payment.

During 4th amendment, those tenants who were not registered were given 6 month time but it could not be happened as envisaged. This notice could not reach to the tillers in one hand and, on the other; there was a condition to register agreement paper between tenant and landlord on payment of rent in presence

of local government authorities . But the tillers had no receipt. Such provision was never before and because of this thousands of tenants were prohibited from registering their tenancy rights. Government need to assess the tillers those are tilling land before 1997 and provide the tenancy right.

Dual ownership in wider perspective may be understood as the land under tenancy and rent is paid. This system has dual benefits to both of the parties. There would be no chance of leaving the land fallow. In course of ending up of dual ownership, the land of absentee landlords is better transfer to the ownership of tenants and pay to the owner by the tenant through the loan from subsidized interest as provisioned in the Act. As this arrangement could not be implemented, the tenancy program became weak. Government thus, has to bring into action of such provision through field verification.

The 4th amendment of the Act aimed at finalizing the tenancy issue within 2 years but during this period nothing is found to have done except issuing notices 3 times from 2019-21. Last date of submitting application is July 15, 2021 and the government expects to complete the land separation by 15, December 2021. It is a daunting task unless taken as rigorous campaign from centre to the ground.

For the purpose of sharing the land, tenant and landlord can apply jointly. While the Act has a provision of paying half of the amount to anyone who want to sale or buy the land for full ownership. However, the landlord and the officials of land offices in mutual cooperation try to force the tenant for accepting in low share or price. It should be done with certification of or in presence of local municipality.

The provision made in 8th amendment of the Land Act 1964 to protect the tenants with regards to no ceiling of land under tenancy, leaving the land to the tenant with appropriate valuation if the land is too small to share and, issuing of joint ownership certificate if the landlord did not come on given date. It is anticipated that this provision will protect the tenants so; it must be brought into implementation with orientation and awareness campaign. The national and sub-national level conferences of the tenants would be desirable.

After the death of a tenant, a single application for name transfer to the claimant and land sharing is desirable but the offices by seeking two different applications, have given unnecessary problems. And, tenants have to go for dates for years even just for name transfer. The process and work need to be simplified and accomplish in no time.

Tenants those registered indicate that they are entitled to get half of the land they have tilled. But later on, they are asked to submit the payment receipt and other certificate of tillage. If it goes strictly, there is high chance of expelling the tenants because the landlords either deny in issuing receipt of payment or if given the

number of parcel are different. Therefore, it should not be made compulsory.

On leadership of local government, the record, and its documentation and inventory are desirable to keep by which the local citizens of various categories can have evidences for immediate solutions for land issues since the municipality will have all details of all the households.

Land fallow over the time everywhere in the country is found to have increased. If the local governments keep the inventory of all types of land and the category of citizens, they would be able to lease the agricultural land in a subsidized rate with minimum facilities like irrigation, seeds, improved technology etc to the actual tillers especially the squatters, landless, agriculture labourers, ex kamiya, kamalari, haliya etc. Provision of transfer to the family and collateral for productive loan can be but no sale of land should be allowed. If this arrangement looks complicated, the municipality can adopt the Act relating to the agreement for rent or contract.

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