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Nepal: Strengthening Land Administration Services

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For Ministry of Land Reform and Management

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Asian Development Bank

Acronyms:

ADB	Asian Development Bank
ADO	Agricultural Development Officer
APP	Agriculture Prospective Plan
BPR	Business Process Reengineering
CBO	Community Based Organization
CDO	Chief District Officer
DDC	District Development Committee
DFO	District Forest Officer
DLRO	District Land Revenue Office
DoA	Department of Agriculture
DoF	Department of Forest
D-LAMO	District Land Administration and Management Office
DOLIA	Department of Land Information and Archives
DOLRM	Department of Land Reform and Management
DoS	Department of Survey
DTM	Digital Terrain Model
DSO	District Survey Office
FDI	Foreign Direct Investment
HRD	Human Resource Development
GL	Government Land
GS	Guthi Sansthan (corporation)
PL	Public Land
GIS	Geographical Information System
GLAM	Government Land Administration and Management
GoN	Government of Nepal
GPS	Global Positioning System
ILO	International Labor Organization (UN)
IP	Indigenous Peoples
IT	Information Technology
LAM	Land Administration and Management
LIS	Land Information System
LRO	Land Revenue Office
MLRM	Ministry of Land Reform and Management
MoF	Ministry of Finance
MoPA	Ministry of Public Administration
NGII	National Geographic Information Infrastructure
NGO	Non-governmental organization
PPP	Public Private Partnership
TA	Technical Assistance
VDC	Village Development Committee

Definition of Nepali words used in the report:

Adhinastha	Under some organization or trust
Amanati	Self-managed by government or Guthi Sansthan or Guthi institution
Badi	One of marginalized groups
Bakyuta	Unpaid land revenue on time
Balighare	System of working on annual payments
Bandobasta	Management
Beth-Begari	Voluntary donation of labor
Bigha	Unit of land area measurement (1 ha = 1.5 Bigha)
Birta	Land grants on which taxes were not paid in general
BS	Bikram Sambat (now i.e., January (1 st month) 2009 is Pousha (10 th month) 2065 BS
Charuwa	Those laborers who take animals to pastures
Chhetriya Kitab	Field book
Chhut	Missing
Chhut Guthi	Subsidized under government Trust
Dakhil Kharej	Updating process
Darta	Registration
Darta Kitab	Register book
Doli	Laborers carrying palanquin
Fukuwa	Release
Goswara	Survey party
Guhare	Laborer on emergency service
Guthi	Land and other property kept for social, religious or other welfare purpose.
Guthi Sansthan	Guthi Corporation
Hadbandhi	Land ceiling
Haliya	Ploughman
Halsabik	Tally new records with the new records
Haqsafa	Buy back
Haruwa	Those laborers who look after the animals
Jagga	Land
Janch	Examination
Jatra	Fair, ceremonies
Jimmawal	State agents collecting land revenue
Kamaiya	Bonded labor
Kamlari	Girls who works as domestic help
Khali	Laborers for threshing of grain
Kipat	A kind of community controlled or owned land system, which was common in Eastern Nepal.
Kitta kat Shrestha	Plot/parcel register
Lagat	Record
Lakhendas	Person in charge of writing by hand the deeds and other documents to be submitted in the office on behalf of the client.
Lal Mohar	Seal (Royal seal in the past)
Lal Purja	Land ownership certificate
Likhet	Written document.
Mal Adda	Land Revenue Office
Masi Bharne Aadesh	A request by the LRO to SO to change the cadastral map for the parcel

Mukhiya	State agents collecting land revenue
Mulki Ain	Civil Code
Namsari	Transfer of ownership
Napi Goswara	Survey Party
Niji	Private or personal
Pati, Pauwa	Public houses
Patwari	Agent for collection of land revenue
Pokka	Files wrapped by clothes
Purja	Certificate
Raikar	Private land owned by individuals
Raj Guthi	Land under government trust
Raute	One of the most vulnerable indigenous peoples
Rokka/Fukuwa	Restriction/permission for the transfer of property
Sanad Sabal	Declaration or decree or order
Sukumbasi	Squatters
Tahasildar	Agent for the collection of land revenue
Tainathi	Under some organization
Talukdar	Agent for collection of land revenue
Tameli	File stored after decision is made
Ukhada	Government owned land but controlled by landlords on which payment is made to landlord.
Zamindar	Big land holders/ also agent for the collection of land revenue

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Executive Summary

This report provides a framework for 'land policy' formulation in Nepal. It identifies various land policy issues to be considered and actions to be implemented in the short term (within 1 year), medium term (2-5 years) and long-term (5-10 years). Areas in which immediate support from external sources is required are also identified.

Land issue has again resurfaced in Nepal as a political agenda for all political parties. It has also become a part of 'peace processes'. Accordingly, it is taken as a major issue in all peace agreements among political forces in the last 2-3 years. As proper land management, administration and access are important for sustained peace and development, immediate attention is required from the Government as well as development partners.

A new policy on land is required to incorporate various new rights that have emerged in the recent political process. These rights include, among others, women's rights to property, rights of the indigenous people, and community rights to resources. A new policy and administrative regulation is required to deal with these new concerns and other expectations like housing rights, guarantee or protection of property, and social aspects of land distribution or access to land. Moreover, these new changes are to be incorporated in land policy in such a way that it will facilitate food production, poverty reduction and to bring about economic growth and development. Similarly new policy is also required to incorporate modern technology that helps in delivering services efficiently and in a transparent manner so that corruption is reduced.

This framework was developed taking an approach that helped, first, to identify the relevant issue in different areas of land policy through field visits and discussions with various stakeholders, particularly Government officials, civil society members and organizations of landless peoples and farmers. Then, suggestions were sought from different stakeholders as well as experts on the issues identified. This helped in preparing the guidelines or in identifying the elements to be considered while forming the land policy. Similarly, various actions that are required to be taken and the role of development partners were also identified so as to take this process of helping the land sector on a continuous basis. Moreover, here 'land' is taken not only as farmland, but all kinds of lands including state land, forest, pastures, riverbanks, and both used and unused lands. Mechanisms to sustainably implement the proposed policy suggestions were also identified in which public-private partnership and a policy of transferring a part of the cost of modernization in administrative services to the users has been suggested.

Nepal now lacks an integrated land policy. So far only the Land Act 1964 (with sixth improvement so far) provides guidelines for land policy. Similarly clear statements of priority are not there. The regulations are dispersed in more than 65 laws, which also contradict each other in some cases. The administrative and service delivery mechanism is traditional. There is wide range of corruption in land administration. Records are not accurate and there is storage problem as they are the paper records. As the information is not accurate, this has caused various conflicts among people. The state land, including the Guthi land, has not been properly measured and adequately used. Government has not been able to provide guarantee on land titles of people. On the other hand, people have a feeling that the Government should give a guarantee of their land ownership. Therefore, there is an interest to shift from deed system to title-based ownership system. But the intuitional structure is heavy and not capable to carry new functions as well as adopt modern technology for efficient delivery of services to clients. Moreover, decision-making is still centralized even though some attempts have been made to make the district level office more effective. There is lack of inter-ministry as well as intra-ministry co-ordination.

Recent political concern on land is centered mainly on improving the access to land for poor and landless people through 'scientific land reform' program. But as the demographic pressure on land is increasing and supply of land has not increased, availability of land on a per capita basis has been declining. On the other hand, there is an urgent need to provide land to people who depend on farming for their livelihood. Therefore, a policy on land redistribution and improving the access of marginalized groups to land is also needed for social development so that peace process can be sustained.

The 'land policy' that is to be developed should help in administering, managing and distributing land in a way that it is helpful in increasing agricultural productivity and production, improving food security, reducing poverty, providing social justice to women, historically exploited people (or, those whose lands have been alienated by the state) and tenants, promoting equitable and sustainable development and good governance which could also support democratic polity and market-based economy. To this effect, the following guidelines have been suggested while forming the land policy.

- Land is also a property even though it needs to be used and managed in a way that it is different from other commodities. Any citizen of the country should have the right to acquire, use, transfer or put under the use she/he desires remaining within the law of the state. State may acquire land of the citizens only for public use and by paying proper compensation.
- Paper-based recording system to be gradually reduced and transferred to electronic-based administration and storage of data. Policies and laws should be supportive for this.
- Mechanisms to solve disputes also to be solved out of the court; more power to local agencies to solve problems.
- Decentralization of rights and responsibilities: District level is to be given more power and responsibilities; central level to fix taxes on land and property and set the norms. VDCs are also to be given authority to deal with land transfers but information should be sent to District level for updating records. Records are to remain at District level.
- Proper study is required for changing deed system to title-based system of registration. But at present, deed system also needs simplification.
- Institutional restructuring (including human resource development) is necessary as a long-term goal.
- Forest and other public lands (or state lands, which is about 80 % of the land) need to be used for the benefit of poorer people and indigenous population.
- Women's rights to land and natural resources are to be respected. Similarly, community rights of indigenous peoples (eg. Rautes and Chepang) whose way of living is directly linked to local natural resources are to be respected.
- State properties need to be categorized as state-private and state-public (those registered as public land; community land; national parks and conservation areas; biologically sensitive areas; and heritage site); former can be sold by the state, but the later cannot be sold.
- An integrated land policy, a comprehensive land law, and a master plan for land use are to be prepared immediately with participation of stakeholders and through decentralized process.
- A wide range of consultations for developing policies on land reform modalities is necessary. A national consensus is required for developing policies for improving access of land-dependent individuals and communities to land. This also applies to fixing land ownership ceiling. It should also be done through decentralized process forming 'land

tribunals' at the district level. Except for historically exploited people, other needy people should have access to land only for use (use right). Tenants' share should be increased (at least 75 % of the production of main crop and 100 % of other crops) and security guaranteed for land holdings below the ceiling, rather than providing ownership rights to the land they cultivate. This is important because of the fact that ability to cultivate land even for small farmers differs in different stages of their life and there is increasing short-term out-migration leading to renting out of land for short time.

- Land taxation seems more suitable as a way to reduce land concentration and misuse of land.
- All the activities related to land need to be brought under one roof (office) at district level.

In order to help strengthen administrative capacity of the Ministry of Land Reform and Management, the immediate supports from development partners are required in the following areas. Tentative cost has also been estimated.

- Developing two policies (Integrated Land Policy and Master Plan for Land Use) and one law (Comprehensive Land Law).
- Piloting of new business process based on electronic media in a office. This requires support for computers, software and office layout, and for human resources.
- As government is thinking about changing the registration system from deed to title-based system, external observation and sharing of experience is also required. As both systems have advantages and disadvantages and as the shift to title-based system is extremely costly, a proper review and incorporation of outside experience is necessary. Therefore, support is required to enable officials to study the external experience. Such study is also required for the land reform and co-operative development in a selected few countries.
- A detailed study about restructuring the Ministry of Land Reform and Management.

For sustainable implementation of new mechanism to improve service delivery and security of land and property, a policy of promoting public-private partnership and transferring a part of the cost of changes to clients is suggested. This, however, needs further study.

1. Introduction

Land issue has again resurfaced in Nepal as a political agenda for all political parties. It has also become a part of 'peace process' and it has been featured in all peace agreements with the 'rebel party (Communist Party of Nepal – Maoist) and the Government in the past. Even at present, it has become a main agenda of the government. Accordingly, it has formed a high level 'Land Reform Commission' in December 2008, which will provide recommendations to the government for comprehensive land reform measures. The main concern at present is to distribute Government's unused land to landless and marginal farmers, squatters and freed bonded labourers (like Kamaiyas and Haliyas) and initiate co-operative farming. Similarly, protection of tenants' rights has also been the focus of Government's program. As land is still central to all economic activities and livelihood of a large majority of population (even though the contribution of agriculture to national GDP has been consistently declining)¹, policy related to land is taken seriously by the people.

¹ The contribution of agricultural sector to the nation's GDP has now reached to 33 %, but still about 70 % of the population derive their primary livelihood from land-based activities.

The political change in April 2006 and the subsequent peace negotiations, election manifestos of the political parties for the 'Constituent Assembly' have all emphasized the new land policy and scientific land reform. The Interim Constitution 2007 has two main provisions related to land. These are:

- Protection of property rights of individuals. This essentially means that the State should protect property (including land) of its citizens.
- State is also to implement a scientific land reform. In this context, State also reserves the right to take land of citizens if it is required for public use including land reform, after paying appropriate compensation.

Concerns of 'indigenous peoples' have also drawn attention of policy makers after 2006 political change. The Interim Constitution 2007 has emphasized their social, cultural, economic and political rights. Nepal has now ratified ILO (International Labour Organization) Convention 169 which gives some special provisions for indigenous peoples, especially in benefit sharing and decision-making if there are development projects in their territory. Similarly, woman's right on property has also been a recent issue. The new constitution (2007) has provided equal rights to parental property between men and women. But woman now control only about 10 % of agricultural land of the country.

Apart from social cause as incorporated in the recent political agendas, appropriate land policy is also important to increase food/agricultural production and income level of farmers, so that problems seen in food security are solved and poverty is reduced. At present, relatively high level of poverty is seen among marginal farmers and landless farm workers. Proper management of land and its access to 'real farmers' will help reduce poverty. Similarly, there is also a need to balance environmental conservation and economic development.

Given the new political development and economic and social needs, 'land policy' is to be revised to take into these developments. The present administrative functioning and provision of services do not guarantee/support the above principles enshrined in the constitution. First of all, government's provision of land services is not geared to providing guarantee to tenure/ownership of land by an individual.

Moreover, the land records and business process that takes place for providing land related services do not match with the above-stated objectives. Land records are not maintained properly and land measurements are very inaccurate leading to conflicts and disputes related to land. The present courts at all levels get more than 60 % of their cases from land related disputes. These disputes could be partly resolved when records are accurate and administrative process is simple and transparent. Similarly, rights to land for women, marginalized groups, and indigenous populations are also important for social development and poverty reduction.

This report provides a framework on 'land policy'. It identifies important issues related to land, their constituent elements and suggestions for land policy.

2. The need for new policy on land:

A new land policy is required for overall transformation in the production relations to bring about rapid economic development with social justice. There are also a number of specific needs for a new policy. These needs can be grouped into the following five headings:

1. **Improving legal regime surrounding land** – should be facilitating better land administrative services with modern technology, guarantee rights (individual as well as community) to property, transparency in land information and official process, tenure rights, and enforcement of land use plan, and protection of environment.
2. **Strengthening land administrative services** – efficient, easily accessible, cost-effective, transparent, and hassle-free administrative services that provide accurate information and guarantee of land ownership and reducing conflict, and increase revenue for the State.
3. **Proper land management** – proper land use (both urban and rural) planning and enforcement to increase production and productivity of land, conserve environment and facilitate optimum utilization of land resources.
4. **Equity and improving access to land** –land policy should help in improving access to land for cultivators and in protecting tenancy rights, promoting social justice in land distribution with sensitivity on the needs of the poor, historically exploited people, indigenous peoples and gender balance in ownership of property.
5. **Reforming institutional structure** – institutional set-up that helps in efficient delivery of services, implementation of the plans and policies through better co-ordination, proper decentralization and information sharing. Redundancy and duplications are to be removed. Human resource is to be developed as per the present and future requirements.

3. Emerging issues in land policy:

From various discussions and seminars, the following issues have been identified.

3.1 Land policy:

- Lack of 'integrated land policy': There is virtually a lack of 'integrated land policy' that helps in guiding land related regulations and programs. In all the discussions, this was pointed out as single most lacunae in proper land management. This policy should encompass the use, management and administration of farm land, forest, pasture, water and other natural resources like mines.
- Un-coordinated land policy framework: There are sectoral policies like agricultural policy, forest policy and water policy. Moreover, various laws and regulations and projects also state policies in implicit manner. But there is a lack of stronger co-ordination and articulation of vision, objective, strategies, and implementation priorities. If this gap is filled, this would help in integrating the other aspects of the state reform programs.
- Clear statement of priorities is lacking: Because of lack of priorities, most of the planned programs have not been implemented. Policies should also state mechanisms to set up program priorities so that they are implemented.

3.2. Legal regime:

- Regulations governing land are distributed in more than 65 laws and some of them are contradictory (see details about review of these laws and weakness in them).
- It does not permit introduction of modern technology and efficient administrative process.
- Some of the laws (especially Muluki Ain) constraint socially equitable distribution of land (like clauses that are gender-biased).

3.3. The land administration:

- The institutional set ups are too heavy and not effective.
- There is a lack of co-ordination among departments/divisions within the MLRM and between line ministries.
- Land administration system is oriented towards generating revenue not developing land and facilitating land management in an integrative way.
- Land information is poor. It is paper-based. Storage is difficult and there are chances of losing land records. This problem is becoming heavier day by day as the volume of land records is increasing.
- The land registration system is not well developed and transparent. There are overlapping claims, false claims and land disputes related to area, boundaries, access (like availability of road and utilities). This essentially means extra cost for people in terms of paying bribes to government employees and lawyers. Similarly, this also means less revenue for the government.
- Present deed system is considered too cumbersome and there is an interest to transform to title system of land registration.
- State does not guarantee land ownership of its citizens, which could be violation of basic human rights as enshrined in the Constitution.
- Most private land owners do not have accurate land titles and guarantee of their land ownership.
- Land market is informal. Informal brokers (*dalals*) deal with land selling and buying. As a result, there are disputes and cheatings. Land mafia controls the land business, who are also able to encroach upon the private and public lands.
- Complicated rules and regulations, which compel clients to hire (or pay bribe to) government officers or private agents (like *lekhandas* or writers) for this purpose.
- Lack of clear legal framework on property rights, transfers and use of public and private lands, and the regulatory power of the State over land use. This has hampered, or will hamper, development of market economy and decentralized public administration.
- Human resource, budget and equipment for land administration are inadequate. There are limited training opportunities. Most staff learn skill by doing the work. The pre-job orientation and regular refreshment trainings are lacking. The present training centers need restructuring in terms of expansion and offering of the courses. Public-private co-operation needs to be improved in this regard. Land Revenue Offices do not have budget for some extra and immediate improvements required in the offices.
- Administrative boundaries among the related institutions² are blurred or overlapped. As a result, there are overlaps in power and authority.

² These institutions at the District level include: District Development Committee (DDC), Chief District Officer (CDO), District Land Revenue Office (DLRO), Village Development Committees (VDCs)/Municipalities, District Forest Office (DFO), Agricultural Development Office (ADO) and Survey Office (SO). At the central level, these institutions are: MLRM, Ministry of Forest, Ministry of Local Development and Ministry of Agriculture and Co-operatives, and Ministry of Water Resources.

- Jurisdiction on who should deal with 'national boundaries' is also not clearly stated. It is mostly done through the Ministry of Home Affairs, but land measurement and survey is done through MLRM.
- Demarcation and definition of land ownership types, especially of state land, is not clear. There are different types of ownership like Raikar, Guthi, State land or government land, Public or *sarvajanic* land, forest land, and pasture land. Within these types, there are other variants. For example, Guthi land has so many variants and these are also complicated to understand. These variants need to be reduced. There is so much controversy to identify and demarcate 'state land' including Guthi land. The boundaries of these lands are ambiguous on the ground. There is also no clear boundaries of the forest and pasture lands. Anything which is not private land is considered as forest land, whether it has trees or not. Government is not able to state how much actually the forest land is. This is important because of growing deforestation and land encroachment in Terai. The prevalence of 'community forestry' and 'leasehold forestry' is further complicating land ownership debate. At present, forestry office gives authority to manage the land, but people do not have confidence on the rights given to that community. Leasehold forestry program has slow progress because of lack of proper definition of public or community land.
- The land valuation system is dispersed and not uniform. Government functions and private markets are constrained because of lack of uniform, universally recognized (i.e., recognized by all) land valuation system. Lack of this system means the loss of government revenue. Banks also make losses if the valuation of the collateral (used against their loan) is not proper.
- Land disputes are widespread and heavily loaded the judicial process. About 60 % of disputes in various courts are related to land, and of these the cases related to inheritance of land and land transfer are the main.
- Low land tax collection: With proper system in place, government could generate more revenue from land. Now there are many types of taxes that the Government can impose on use or misuse of land. Similarly, taxes are evaded in the transfer of land.
- Access to justice is poor in land related matters. Especially poor people will have hard time in having access to justice.

3.4. Land management:

- There is no 'integrated land use planning' – inclusive of all natural resources. Productive land are used for non-agricultural purpose, irrigated areas have turned into built-up areas, encroachment of protected areas and forests, land grabbing, fallowing of land, land speculation, illegal deforestation and logging and the like have resulted from lack of integrated land use plan. Whatever plan has been developed has also not been fully enforced. This problem has led to unsustainable exploitation of forest, fisheries and other natural resources. Urban development has also been unsustainable.
- Decentralized system of 'integrated land use planning' is lacking: Local bodies like DDC should be able to develop land use plans for respective District in consultation with all stakeholders. But there is no practice of this system. Lack of this system means low production and productivity, lack of employment and adverse impact on the poor.
- State land or public land is not clearly demarcated and used. About 80 % of the land is public land. There is an encroachment of this land, leading to environmental degradation.
- Land development (for farming) is lacking. Many potential areas which could be developed as good land are not developed. Examples could be degraded land, river beds and degraded forests.

- There is a large amount of unused land in urban areas. Investment on land for price speculation means that these lands are just left for price to increase. Similarly, public places are not used properly. These lands could be meaningfully used to reduce food insecurity of poor urban dwellers.
- Problem of illegal settlements is growing and reaching an extreme limit.
- Public works such as road expansion, road reserve, irrigation are hindered by a lack of clear policy. Similarly, the lack of resettlement policy is also affecting the public works, particularly the problems related to acquisition of land is getting difficult.
- Urban land management is becoming a problem. In the absence of clear urban land policy, urban development is becoming a complicated and chaotic, constraining development of proper urban infrastructures.
- There is a lack of human resource in land management.
- Land productivity and cropping intensity are low in both smaller and large land holdings. Intensity of cropping is high among the 'middle farmers'. This suggests that too small and too big farm holdings are not conducive for increasing the production and productivity of land.
- Tendency to leave land fallow has increased especially in the hills and mountains. But no information as to its scale – some estimate it as 20 % of land. Defining fallow land is also difficult. There is a regulation that discourages the practice of keeping the land fallow. But this has not been implemented at all.
- Scattered and fragmented settlements mean that delivery of services has been difficult. This situation exists mainly in the high mountain areas.

3.5. Improving access to land:

- Land in Nepal is obtained mainly through 'inheritance' (in 86 % of the cases; only 14 % land is obtained through market and Government or other public distribution program).
- NGOs and civil society is promoting soft approaches in improving access to land, i.e., helping through proper implementation of present policies.
- Historical reasons³ for wide disparity in land ownership; and large land owners are usually absentee landlords who do not invest and pay attention to land.
- About 25 % of the families in the country are considered landless (even though there are no clear data as to the landlessness, it is a commonly quoted figure). There are also other marginal farmers who have access to, or ownership of, small amount of land. These are also land dependent families. Improving the access of these landless people to land is a now a big problem.
- Supply of land has not significantly increased. On the other hand, there has been rapid increase in land holdings (farm households) because of population growth – the result being the decline in land holding per household – now only 0.8 ha (for 6.2 people, i.e., the average family size).
- There is high poverty among agricultural wage laborers. Incidence of poverty among this group was almost 56 % in 1995-96.
- There is increase in land fragmentation. Now a household has on average 3 pieces of land and average area is only 0.24 ha.
- Mixed tenancy is common, especially in hills and mountains due to increased out-migration, which usually occurs for a short-duration. Even small land holders have

³ In the past (before 1950), State used to provide land grants in the form of Birta (in which taxes were not paid usually) and Jagir (in lieu for works/jobs done for the Government) and all other lands were State land (crown land). Farmers were given land for cultivation as tenants by the State or by Birta and Jagir owners. Later, the State started selling land and a private tenure developed in the form of Raikar land. As only a few connected to the rulers obtained land grants, and as it passed on their progenies, land distribution remained skewed.

rented out their land. If the tenants are to get ownership rights on the land they cultivate, these marginal farmers who migrate for a short-term will lose a part of their land. This may be unfair for these marginal farmers.

- It is said that there are about 0.45 million unregistered tenants, but not yet well verified.
- Ownership of land by women and Dalits is extremely less in relation to their proportion in the population. This discrimination is seen more vivid in Tarai.
- Many poor people cannot afford to buy land because prices have increased rapidly now.
- There is less Investment on land for production activities. But investment on land for speculation is high.
- Informal land renting system is pervasive and there is a controversy as to how to protect tenants and in defining tenant rights. Present system of equally sharing the products of land between landowners and tenants is seen as exploitation of tenants. Therefore, there is a need to increase share of the tenants. On the other hand, if the tenants are given the rights to land ownership of the land they cultivate, it is also possible that land owners may not rent out the land at all.
- Land has been distributed from time to time but the landlessness problem has been growing and in this context it is necessary that those who get Government land, they should not be allowed to sell it. The present system of 5 years period is not effective as they mortgage the land and sell it just after the expiry of that period. The current international practice is that those who get government land through land distribution program should not be allowed to sell the land.
- Land ceiling has been a controversial issue. A study is needed to determine this 'ceiling'.
- There is no security of tenure⁴, even though constitution guarantees it.
- There is no proper record as to the use of land and whether it is being kept as fallow land. There is also no clarity as to what is fallow land. Government can impose extra tax on such land, but it has not been done in practice.
- Present political problem and confiscation of land by groups without any legal framework and procedure is giving a feeling that there is no tenure security.
- Many land conflicts are linked to division of property among inheritors.
- Land fragmentation is a serious problem. There are about 25 million parcels in the country, and a parcel is of about 0.3 ha.
- Registration of community rights and traditional rights is also essential.
- Registration of joint-ownership of land by husband and wife is essential.

4. A vision for land policy

The Government of Nepal has no 'land policy'. Land Act 1964 is implicitly taken as a land policy of the country, which aimed at increasing agricultural production and access to food through land distribution, co-operatives and tenancy rights. Therefore, a clear vision in land administration and management is lacking.

Vision for land policy in Nepal should be as follows:

Land should be administered, managed and distributed in a way that it is helpful in increasing agricultural productivity and production, improving food security, reducing poverty, and providing social justice to historically exploited people (or, those whose lands have been alienated by the state). The land policy should also help promote equitable and sustainable development and good governance for strengthening democratic polity and market-based economy.

⁴ It has been removed since 1996, when the 'double tenureship' was abolished.

The above vision means:

- Land will be administered in a way that rights to specific property is clear and secure, and makes its formal transfer simple and affordable. The disputes over land will be reduced and it could also be resolved outside the court.
- Land will be distributed in a way that people or groups of people who had been exploited by the State through the alienation of their land will get the justice. These people should get land from the State. Government should identify these people and transfer full rights to land for their secured livelihood.
- Land will be managed in a way that it helps in increasing production and productivity, improving access to land and food for the poor dependent on land, and leading to sustainable management of land.
- State land or public land which occupies about 80 % of the total land of the country will be protected and used to maximize benefits to the poor and disadvantaged.

In order to realize the above vision, the reform will be necessary, and guiding framework has been given for this purpose in this report.

5. Guidelines for making land policies:

5.1. Improving legal regime.

5.1.1. Objectives: The legal regime should help in efficient delivery of service through adoption of new business process; reduce corruption through transparency and punishment to all parties (including clients) who do wrongs.

5.1.2. Elements to be considered:

- An effort to bring all the land related laws within one Act (law) is necessary. Only one Law on Land is enough. Ministry of Land Reform and Management in co-ordination with Ministry of Law and Justice and other stakeholders (like Ministries related to agriculture, forestry, local development, urban planning).
- The new Law should also give due attention to the emerging rights and issues of woman and indigenous peoples.
- It should facilitate introduction of efficiency in the business process like simple and reduced forms and introduction of electronics-based administrative service, i.e., it should permit as legal evidence documents recorded and produced in electronic form.
- The work of lekhandas (writers) should be brought under a standard system and a code of conduct. The present licensing system from court seems fine, but District Land Revenue Office should have power to control quality of services, fix service charge and have authority to revoke licenses.
- Lekhandas (writers), notary and witnesses and clients are also to be punished if they supply wrong information and faulty papers. At present, officials are unnecessarily harassed from the wrongdoings from these parties.
- The process of getting justice in relation to land disputes should be made simple and decisions should be given quickly. The process and time needed for decision should be specified in the law.

Land administration

5.2A. Private land (*Raikar*) administration policy

5.2A.1. Objectives of private (*raikar*) land administration: The objective should be to make secure the ownership of land and other private property; to maintain accuracy in the management of land records and information; to reduce legal cases and other disputes related to land; and, to help in the maximum utilization of land, especially in food production.

5.2A.2. Elements to be considered while forming the policy:

- The policy should make clear the rights of the state, communities and individuals on land.
- Protect 'property rights' of individuals (like right to acquire, use, transfer or put under the use he desires remaining within the law of the state).
- Land records kept in the government offices should be accessible to concerned persons. There should be rights to information as to the land ownership, but, at the same time, there should be privacy in the ownership of property.
- State should guarantee ownership of land, i.e., protect land rights of its citizens. For this purpose, improvement in deed system should be made before it is shifted to tile based system.
- Most disputes about land are related to 'land transfer through inheritance'. A study on nature of disputes with an aim to develop a mechanism to resolve them 'out of the courts', especially at 'ward' and VDC level, is needed.
- There is a need to change the paper-based system of recording and processing documents (for land registration, tax purpose, and for division/transfer of property or any official work) to electronic-based system. But before that forms and procedures are to be simplified and indexing of parcels should be done by their 'number' – not by the owner's name. Simplification of the forms and the process needs to be done immediately, and the experimentation with modern technology should be done in a stepwise manner as it requires heavy investment.
- Disputes have also increased because of two records - old records in Napi (Survey) office and new records generated from the resurvey from Goswara. Updating of old records is useful than generating new records. The Government is not able to cope with the disputes taking place because of this practice. Surveying is to be done through Survey Office, not through new 'institution' like Goswara. If there are weaknesses in Survey Office – then it should be strengthened.
- Government should be doing a once-for-all 'halsabik' (establishment of rights) with people's participation in the field itself, and then to identify 'private', 'public', 'Guthi', and 'state land'.
- Private survey agencies (licensed through professional organization and monitored by them) need to be employed for the survey.
- As new and modern technology for land administration is costly and the Government lacks adequate resources for this, a mechanism to transfer a part of the cost to the users is necessary.
- Concept of 'multiple parcel information' is needed to be reconsidered as it is going to cost a lot for the survey. It is also not a responsibility of land ministry to put information about accessories and utilities in the cadastral maps. Only the boundary lines and parcel numbers are to be kept in the cadastral maps. The other information can be filled by

other agencies using base maps developed by MLRM and their integration through GIS would give 'multipurpose' information as required.

- There is a need to transform from 'deed system' of registration to 'title system' of registration. But this change requires a heavy investment and takes long time. Therefore, this shift should be made only after careful study and consideration. This is specially so because there are success and failures in both systems. For making a smooth shift from 'deed system' to 'title-based system', following steps are suggested – simplify deed system throughout the country through simple forms and simple business process; field observation of successful cases of deed registration as well as title registration; develop a model of 'title-based' registration system considering the experiences of other countries and that is suitable in Nepali context; introduce this new model in one rural area and an urban area for piloting; examine efficiency and outcomes of these two systems; then develop a policy whether to move to title based system.
- Study on the use of e-governance is necessary. There is also a project which looks after e-governance in Nepali bureaucracy. E-governance and e-records (including *lalpurja*, or land deeds, making) will be useful given that there is a tendency to make forgery papers including *lalpurja*.
- **Land Market:** There is a need to develop formal 'land market' by formalizing the informal land markets. This can be done by making the land-agents legal. Only these legal agents are to be permitted to broker the land dealings. Government should also disseminate information on land prices by establishing land banks, which will also buy and sell land from private agencies.
- **Land Valuation:** It is necessary to make land and fixed asset valuation uniform and acceptable to all parties. A single 'land and fixed property valuation authority' is necessary, which can be established under MLRM and provision should be made that the valuation done by this agency should only be valid for national and international property evaluation purposes. Proper mechanisms need to be made regarding its operation at the district level and how can it be made accessible to people in rural areas. Regarding fixation of valuation rates, Ministry of Finance should be given the authority.

5.2B. State land administration policy

About 80 % of the land in Nepal is still owned by the State, and it is kept in the form of public and government lands like forest and pasture. A large part of forestland is owned by the Government in the name of forest, but not all forestland is under forest. About 2 % of the cultivated land is Guthi land.

State land or public lands are essential for public good – for social welfare, recreation, open spaces and environmental conservation. But because of demographic pressure and also due to economic necessities, there is a growing pressure on public land. These public lands are to be protected for present generation and need to be protected at least in the same condition for the future generation.

5.2B.1. Objective:

The basic objectives of public or state land administration should be:

- To conserve and protect the public and state lands and other related properties. As public and state lands could be used for common goods, it could also act as a cushion for the poor and vulnerable.
- To maintain environmental balance of the country. The conservation of protected areas, forests, pastures, rivers and water bodies, and wet lands is important for the conservation of biodiversity and natural ecosystem.
- To facilitate development of infrastructures for public good.

5.2B.2. Elements of Sate Land Policy:

5.2B.2.1. Guthi lands:

- All Guthi lands are to be administered by MLRM. It (DLRO) should maintain records and other dealing with Guthi land.
- All Raj Guthi lands/property are to be registered in 'one category' as Guthi with status of 'public property', which means this cannot be bought and sold or transferred, even by the State.
- Before giving Raj Guthi land/property the public property status, a clear demarcation of the land is necessary. All the tenants of Guthi lands are to be provided with tenancy rights once and for all, and the remaining Guthi lands are to be given the status of 'public property'. According to recent Supreme Court decision, all Guthi land has been made state-public land, which essentially means it cannot be alienated at any cost. This decision needs to be changed by formulating a law that provides the tenancy rights to the people who have lived on or cultivated the Guthi land as tenants. Then after, all Guthi lands can be made 'public lands'.
- Make all Guthi land 'one category' by removing all other categories and after consultation with stakeholders and devising the way of doing this.
- Removing the concept of Niji Guthi and converting them either as 'public' Guthi or as community Guthi depending upon the nature of Guthi (especially if all the cost was born by individual, then it may be converted to community Guthi). Registering the Niji Guthi in the name of the 'purpose or the cause' for keeping this Niji Guthis.

5.2B.2.2. Other state land:

- There is also some confusion in state-public land or state-private land. State land area needs to be clearly defined as to the state-public (which cannot be sold or transferred even by the State) and state-private (which can be sold or distributed by the State)
- Forest land should also be categorized into these state-public and state-private categories. All protected areas (national parks, conservation areas, and biospheric reserve) need to be made state-public for environmental and biodiversity conservation purposes. All other forest lands should be made state-private, which can be leased out to people for use and management.
- State should discourage ownership of state land (both state private and state public) by families and individuals through occupation. In the past, people also acquired the state land as private property, through occupation of state property. This practice needs to be discouraged. However, the State may decide on using the state-private land to improve livelihood of people or put into other public interest without alienating its ownership rights.

- State may allow certain groups of people, especially the poor people, to cultivate or use the state private land, but without alienating the ownership rights. These lands should be used for improving livelihood of poorer people through long-term leasing and developing infrastructure.
- Community and traditional rights also need to be recognized through registration process. Therefore, there could be community land under the name of the community and traditional rights to certain land, forest and pasture. This right should also be recognized. At present, these are not registered or legally recognized. The lands under these rights need to be treated as state-public land so that they cannot be alienated in terms of ownership rights, but community having that right should have the authority in terms of leasing, mortgaging, using, and managing.

5.2C. Land information policy for effective land administration

Land information needs to be accurate. Implementation of land policy, whether it is land administration reform or land reform, information about land (like its ownership, use, natural characteristics, location, size, and area) is critical. Moreover, land information should be available to the public and it should be shared across the agencies. For example, at present, land records are not updated and they do not have information about road developments and irrigation channels. Therefore, it becomes problematic for both generating revenue or in reducing the disputes. There is no information sharing practice among line agencies.

5.2C.1 Objective: To protect and guarantee ownership of land through reliable information and effective land administration.

5.2C.2. Elements:

- All types of dealings related to land like land registration, land administration, updating, and monitoring should be done from one agency (one window service delivery).
- A 'land information system' (LIS) for land administration and management needs to be developed in consultation with related line agencies.
- Arrangement of research, studies on land measurement techniques like geodetic network, plain table network and gammetry network.
- Strengthen the astronomical station at Nagarkot and convert it into a research station.
- Resurvey of the land: there are about 24 million parcels, and 60 % of them need resurvey. There has been 30 % increase in land parcels since the original survey was done. Area per parcel is 0.39 ha. A survey team (consisting 80) can survey 1,000 ha in a year in urban area and 500 ha in rural area. From the current survey rate, it will take 100 years, and by that time, resurvey is necessary at the other end. In 7 districts, land survey has not been done at all. In Terai, settlements have not been surveyed (i.e., Gaun-block survey). Therefore, the process of surveying/resurveying needs to be accelerated with the use of appropriate technology and greater allocation of resources. There could be different options for accelerating the survey process. For this effective technology is required rather than advanced and sophisticated technology. For example, collecting electronic data (eg. a page for a land owner in lap-top computer or other small electronic gadget in a specified template can act as a record of an owner's land data) in the field itself could expedite the process. The present system of paper-based field-book may not be required if some innovations are made in electronic field-book by making a provision to include signature or thumb print. The other option could be GPS system. At present,

survey has also been delayed because the land owners do not fix the boundaries by using the pegs in every turn. This should be made compulsory.

- Land information should be accessible to the concerned agencies, and they can share their data base (for example, a bank may have access to data and can judge by itself whether the land proposed as collateral has already been sold out). But the privacy of an individual owner should also be maintained.
- Basic indicators (or template or format) of land information should be developed with discussions among related agencies like banks, land reform office and land use office. Information based on the agreed template needs to be collected.

5.3. Land management policy

Land management refers the decision-making on the use of land (farm land, forest, pasture, urban settlement, recreational ground, parks, and conservation areas), conditions of use, and monitoring and regulations of these conditions/use.

The decision on the use of private land is based on individuals. But, the State can make regulations as to how and for what purpose the land should be used. If this is not done, there could be waste of resources. For example, government has provided irrigation facilities in some localities (like Bharatpur in Chitawan district). But these lands have been gradually converted to settlements. Now the investment made in irrigation is of no use. Similarly, in urban areas, there is a severe lack of public and open spaces, and valuable lands for crop cultivation have been converted into dense settlements. Similarly, there are sensitive and vulnerable areas, which need to be protected through proper land use and management.

Accordingly, land management policies are important. However, in Nepal, there is no central authority to develop land management policies and monitor them. Land management authorities are also dispersed among ministries like forest, agriculture and urban development. Co-ordination mechanism to bring these ministries together for developing 'integrated land management policy' is also lacking.

According to Land Related Act 1964 (Fifth Amendment), a council is to be set up for developing land use plan of the country, under the chair of vice-chairperson of Nepal Planning Commission (NPC). But this council has no formal role and it has not been able to come up with land use plans and its implementation. There is also a project with MLRM regarding land use planning. This project has just recorded existing land use of 32 districts. But it has no authority to fix the land use system.

5.3.1. Objectives

The objective of 'land management policy' should be:

- To create an environment in which land and natural resources like forests, pastures and the other types of land are managed in an efficient and environmentally sustainable way so that there will be maximum benefits to people and the country.
- To manage land in a way that resources are preserved and protected for future use not only for farming but also for effective urbanization.
- To discourage undesirable uses of land and resources.
- To develop policy and management strategies to enable decentralization process.

5.3.2. Elements:

- Availability of land and related resource and their present condition should be considered while making the land use plan. This plan needs to be strictly followed and monitored. Mechanism for the enforcement of the plan and its monitoring is required. The 'land use council' should be revitalized and helped to develop 'integrated land use plan'. This plan should also be integrated with other socio-economic plans. There are various Master Plans in Nepal related to individual sector like Agriculture (eg Agriculture Prospective Plan or APP) and forestry (Forestry Sector Master Plan). These current plans need to be studied and a link developed with the proposed 'integrated land use plan' for the country. Land use plans need to be formulated even at the local levels (Region, District and VDC levels). Guidelines for making these land-use plans at the local level should come from the national authorities. These plans should also incorporate land-use for different infrastructures like road, irrigation channels, hydropower, and dams. Resettlement mechanisms should also be clearly specified if there are displacements because of the infrastructure projects. At present, laws regarding resettlement of such displaced people are being developed. These regulations should meet the international standards so as to attract donor funding in big infrastructures. Similarly, such land-use plans should also specify lands for social services (hospitals, educational institutes, and old age homes).
- Land use plan should be developed by each district (mainly DDC) and their capacity should be improved.
- Human resource capacity for land use planning at the local level needs to be developed.
- Local land use plans (like at the DDC and VDC) should be developed with community approach, i.e., experts and community representatives work together to develop the plan (Participatory Land Use Planning).
- Settlements, industries and other non-farm activities should not compete for the land suitable for farming. In other words, these non-farm activities are to be located in lands not suitable for farming.
- Priority areas like vulnerable and hazardous areas, agriculturally potential areas, natural reserve and bio-diversity hotspots should be identified. Land-use plans for these areas should be developed separately using a participatory method.
- Authority of municipalities should be specified regarding land use planning, development of plans, zoning regulations, land adjustment procedures, and enforcement mechanisms. Land allocation mechanisms for new urban development should also be specified.
- Housing rights of the real landless and squatters, both in rural and urban areas, should be respected.
- Government should formulate how much land area is required and in which location for preservation of forest, natural resources and biodiversity. At present, about 19 % of the total area has been allocated as 'protected area'. Depending upon the nature of land and physiography, government should decide on how much area should be covered by forest and protected area. For example, in high mountain and hilly areas, at least 60 % of the land should be allocated for the forest. Similarly, in Churia, which is very sensitive to landslides and erosion, a standard should be set as to how much area should be under forest.
- Land use and management plans should also be tied up with nature of the land and its vulnerability. In the hills and mountains, government should emphasize cultivation according to the slope gradient. In general, it should discourage intensive crop cultivation in areas having more than 40 degree slopes.

- A land use system guided by law is to be planned and implemented. For this following steps should be taken.
 - formulate laws and regulations that help/enforce land use plan and implement it for sustainable land management system.
 - stop unregulated and haphazard urbanization and settlement expansion.
 - protect cultivable land and stop it from other uses.
- Land development, environmental conservation and arrangements for settlements with the following actions:
 - stopping plotting of cultivable land for planning, settlement, housing and industry;
 - while developing land, one should keep the free space as stipulated and develop road, sewerage, drinking water, electricity before one sells the land for housing or develops buildings there;
 - housing and physical planning department should develop 'settlement policy' and accordingly the land should be developed and settlements created;
 - arrange land market after land development. There should not be a ceiling on land ownership for housing development;
 - develop policy for consolidating scattered and sparse settlements at one location in the high mountain and other mountain areas.
- **Land for military use:** Military camps, training grounds and firing ground are required. During the conflict time, various production land and community forests were also used by military camps. In some cases forests were also destroyed. The 'land use plan' should also specify the land area for military use and in other areas military activities are to be restricted. Generally unproductive or uncultivable lands are to be used for such purposes.

5.4. Improving access to land (or, agrarian reform):

Improving access to land through land reform⁵ is a part of greater agrarian policy formulated by the Government. As there is a large scale poverty among the people dependent on land, improving access to land is supposed to reduce poverty and increase production and productivity of land. Moreover, 'housing right' has been enshrined in the constitution, which means that landless people should at least have ownership to a housing lot.

5.4.1. Objective:

The basic objectives of 'improving access to land' is to correct historical injustices made in the process of alienating land of marginal communities and to promote land distribution with equity for effective land use and management, improvement in production and productivity of land, and better environmental sustainability.

5.4.2. Elements:

- Process of consultation for developing policies through consensus: Land distribution is a contentious problem. As land supply cannot be increased significantly, there will be someone who has to lose the land. Similarly, fixation of ceilings, modalities of acquisition

⁵ Here 'improving access to land' is taken as a part of greater policy on agrarian or land reform. This reform covers not only land distribution but also other aspects of production, productivity, market support, infrastructure building, input and credit support and farm research and extension. For this reform, an integrated approach of different ministries or line agencies is required. Here only land distribution aspect is covered.

of land and generation of resources for buying land above the ceiling are very contentious issues, which could also lead to conflict. On the other hand, there is no quick fix solution to deal with these issues. Therefore, through consultative process, these issues need to be dealt with. Studies are also required to determine who need ownership of land because of the injustices done to them in the past, what could be appropriate ceiling, how to finance land reform, how to distribute land (criteria for distribution) without fragmentation of land, and reducing fragmentation of holdings.

- Fixing land ceiling: Land ceiling is now considered as an essential option in order to arrange land for distribution. It should be fixed in a way that it does not discourage investors on land for food production. A separate study is required to determine land ceiling. This should also be done at the district level. That is to say, it should be determined at the district level by a committee (tribunal) composed of people's representatives, landless (who are farmers) people's representatives and experts.
- Problem of unregistered tenants: The district 'land reform' committee to be formed as above should also look into this matter. They should have authority to make decisions based on local evidence to identify real tenants and restore their rights according to the existing laws and regulations.
- A provision that land obtained through state distribution mechanism (i.e., free land given to certain communities and people) cannot be sold out. However, state should also guarantee that this land will not be alienated from the beneficiaries in future.
- Implementation of land distribution policy: Once the above issues are addressed, these should be implemented without any bias. Authorities implementing the policies should also have proper security. Party political interference should not exist. Consensus is thus important.
- Land taxation as a way to reduce land concentration and misuse of land.
 - *Fallow land tax*: There is a provision for a fallow land tax in the Land Act 1964, but it has not been implemented. Discouraging the owners to keep land fallow is essential to reduce land speculation. But it is also equally difficult to define a fallow land. Therefore, a proper definition needs to be coined and different categories of land fallowing be developed. For example, some keep land fallow to improve productivity and soil nutrition. Others might just give the impression that they have cultivated the land, but do not farm for economic return. Therefore, a proper guideline should be developed regarding fallowing of land and land tax be imposed on lands not cultivated properly. The best institution to monitor this and levy the tax is VDC.
 - *Progressive land tax*: This tax structure can be maintained to discourage land hoarding, having large size of land and land fragmentation. If tax rate increases for larger holding, this will discourage land concentration. Similarly, adjusting the taxes with the number of parcels of a holding will also discourage land fragmentation. For example, levying additional tax on parcels will help to reduce land fragmentation.
- Prevention of illegal encroachment and land concentration: Land grabbing and encroachment is high, and there are land mafia working on this. Encroachment of public

and state lands should be strictly prohibited. Moreover, there is also a tendency to acquire land through land occupation by illegal means. This type of acquisition need to be checked.

- Land supply needs to be increased through land improvement schemes. The river beds, ponds and water bodies, degraded forests, and other areas where crop cultivation, or farming, has not been done should be improved and distributed to landless people for use and management on a long-term basis.
- Tenancy rights: Even after land reform, many small farmers and landless people will continue to work on land as tenants or as wage labourers. This is because sufficient land for farming cannot be provided to all. Given the fact that there is not much surplus land, even though 'ceiling' is reduced to 3 ha only a small percentage of landless people will have access to land ownership. Therefore, many will continue to work as tenants. Even at present, mixed tenancy is pervasive in rural areas. The present share that tenants get is so low (about 50 %) that it is hardly beneficial for tenants to cultivate the land, but they still do it to utilize their unused labour. In this process, they get some food and expand their food security.
- Therefore, there is a need to increase the share of tenants. They should get at least 3/4th of the production. There is also a question as to whether tenants should get ownership right to the land they cultivate (like 50 % of the land they cultivate – this provision was there before 1996 when the dual ownership was abolished). The question now is that land holding has become so small that now land owners will not give the land to tenants for cultivation if there is this provision. They would behave as if they have cultivated the land, or they have used hired labour. If this happens, many tenants will also lose the opportunity to expand their food security or generate extra income through cash cropping. Then the overall production will decline.
- Therefore, the maximum benefit for the tenants will be there when they get high share (like more than 3/4th; and giving only 1/4th of the production of the main crop to land owners) from the land they cultivate and the opportunity to cultivate the land until they desire, but without having rights to the land ownership. The later provision will also encourage landowners to invest on infrastructures.
- Housing rights: For the housing rights of its citizens, state should do the following.
 - the State should provide minimum housing space for residence to the people who are virtually landless.
 - to make an accurate record of government and public land and present it in map forms, which should be published and distributed in a book format.
 - bring a separate policy on settlements and make building and housing laws and town planning laws effective.
 - develop policy to help deprived communities (like Kamaiya, Haliya, Raute, and Badi) to have access to land and provide social justice to them.
- Decentralized land distribution (reform) process is required. This has been stated earlier also. For this, the following steps should be followed.
 - clearly define the role of local agencies in relation to land reform, administration and land development;

- develop a collaborative mechanism at local level among the related agencies to update land records through properly defining the local agencies roles and responsibilities in land administration, land record maintenance, use and responsibility;
 - professional in land informatics like geomatics should be kept even at local agencies.
- Linkage between land distribution and agricultural development: As land distribution to some landless families will not allow agricultural development, state should also help in increasing production in large farms so that employment opportunities are also generated. Research and extension and proper functioning of market are also essential in this regard. Government should develop a holistic package of policies and programs to help small holders without putting restraints on large farms to produce more food and farm intensively.
 - Land consolidation: Owing to the fragmentation of holdings, it is not conducive for investment on infrastructure. Moreover this discourages farmers to put extra efforts in farming. Therefore, a consultative study is required to reduce fragmentation of land. An incentive structure (like tax reduction; no tax in exchange of plots; or financial support for land pooling system and for co-operatives) helps in land consolidation.
 - Gender and land distribution: Only about 10 % of the land holdings and 5 % of the land area is under the ownership of women. Women's discriminations is very high in Terai. It is seen that women's access (ownership and effective control) to land is important for their empowerment and overall socio-economic development of family, including that of children and the elderly people. The following policies should be emphasized in this regard:
 - The land title (ownership) should be in the name of husband and wife, and joint agreement is necessary for its sale, division and transfer. This improves status of women in the family and society.
 - The present policy of giving concession (20%) on tax for the registration of land in the name of women should be continued. This tax concession should be increased to 50 % immediately.
 - **Land Policy for indigenous population (IP)⁶:** There is also a wide diversity in the socio-economic conditions of indigenous peoples, and of their dependency on land and natural resources. Recognizing this diversity, Nepal Federation of Indigenous Nationalities (NEFIN) has made five groups of indigenous nationalities based on literacy rates, occupation, land ownership, and population. These are: endangered groups, highly marginalized groups, disadvantaged groups, and advanced groups.
 - After the 2006 political change, attention to 'indigenous peoples' has increased. Nepal has also signed ILO 169 which gives certain rights to indigenous communities. The following should be considered while forming policies related to indigenous peoples' access to land.

⁶ Nepal has a significant population of IPs, who are known as *adivasis* (literally means indigenous peoples, autochthons, native peoples) or *janajatis* (nationalities or indigenous peoples). They account about 37.2 % of the population. Government has recognized 59 groups as indigenous peoples.

- IPs, who depend on land and natural resources directly, and whose way of life is dependent on these resources need to be identified and their community rights to land and forest or other resources should be recognized. For example, the rights of the communities like Raute, Chepang, and other endangered groups should be recognized and land should be allocated to them on community basis, on which they have the right to use and manage. However, the community cannot alienate the land.
- Traditional use-rights of the IPs should be recognized over the resources like community land, pasture, water, and forest. There should be a provision to register this right as 'collective rights'.
- **Foreign Direct Investment (FDI) in Land:** Nepal has not yet received foreign direct investment in land. However, this has become an issue in other countries like India. Given the fact that Nepal has potential to attract foreign investment in land, especially on touristic areas and for cultivation of cash crops like medicinal herbs with potential to utilize the bio-diversity existing here, it is important that guidelines should be immediately developed to this effect. There could be adverse impacts on livelihood of local communities from foreign investment in land. Farms or companies developed from foreign investment might use resources like water depriving the local communities. Similarly, it might lead to bio-piracy and environmental pollution. Accordingly, future policies in this regard should give due attention that FDI should not be allowed in way that it creates problems for local communities. Moreover, it should only be allowed after community consultations and with careful consideration of its social, economic and environmental impacts.

5.5. Institutional capacity and arrangements

The present institutional set up needs to be improved to implement changes in land policy.

5.5.1. Objectives: The objective is to increase the capacity of the institutions involved in land administration to implement the new land policy. The new institutional structure should be able to provide efficient services to the people, able to maintain good land records, secure rights of people regarding land ownership, and use and produce human resources which can use new technology and methods.

5.5.2. Elements:

- A system to develop professionals in land administration and management with skills in new technology is required.
- Standardize the education and skills of professional of land services working with the Government and the private sector. Similarly minimum education and training requirements of different levels of professionals should be fixed.
- The policy of developing courses on new techniques like Geomatics/Geo-ITC within the country. Private colleges should be encouraged and the Government can outsource the education services.
- In various courses even on technical subjects, there should be social aspects also.
- Emphasis should be given in disseminating the knowledge about appropriate technology rather than on high technology.

- There should be regular training within the Government (MLRM). There should be orientation course for the new comers and refresher trainings for other staff on a regular basis.
- The Government should fix roles and responsibilities of professionals like civil engineers, geomatic engineers, land valuers and Geo-ICT professionals.
- Expand the international relationships in geo-measurement and land management.
- Create an environment in which national professionals can provide their service at the international level.
- Develop 'land administration' as a separate category of 'civil service' – under which there will be two sub-groups – 'survey', and 'land management'.
- Give decision-making power at the district level for land administration, except for setting guidelines and norms, which will be retained at the national level (Ministry/Department). VDCs are to be further empowered with the transfer of authority for land transfers. But the records or information is to be sent to District for updating the records. As VDCs do not have capacity for storage of records and for recording on documents, this information needs to be sent to the district office.
- Provide the service through 'one window' policy, which means that all land related offices (DLRO, SO and Guthi Sansthan) under one roof.
- **Changes suggested at the national level organization:**
 - Scrapping Guthi sansthan, and adding a department within the ministry as 'Guthi property management department'. This department will look into the matters related to inventory of Guthi property and in collecting income from Guthis. The task for organizing the cultural, social and religious functions will be transferred to Guthi Authority under the 'ministry' that looks after cultural affairs of the country. Arrangements are to be made for transfer of income from Guthi property to this new Guthi authority.
 - There is duplication/overlapping between authorities among the departments within the Ministry. For example, there is duplication of responsibilities between Land Reform and Management Department and Land Information and Record Department. This needs to be reduced.
 - It is suggested that Guthis are categorized into three levels – national, regional and local. Local Guthis can be managed through CDO office by making proper organization/ committee. All others could be managed through national office by creating of board of trustees for each Guthis. A separate study is needed in this respect.
 - Forming a 'Property Valuation Authority' within MLRM in which business sectors, farmers organizations, banks and financial institutions and other related agencies will participate. This participation is required for developing norms used for valuation of fixed properties.
 - Forming Regional Training Centers within MLRM to provide orientation for fresh employee and for refreshment trainings.
 - Staff needs further training in the use of electronic-based administrative system. Such trainings are to be arranged in collaboration with private agency.
- **Changes suggested at the district level organization:**
 - All the activities related to land will be brought under one roof, and there will be a one window service to the clients. (This means bringing land survey, land reform,

and Guthi offices at district level under one office called D-LAMO). The Gowswara Napi (Survey) needs to be scrapped; the functions of this office will be done by the proposed Napi (Survey) Section (at present Survey Office) within D-LAMO.

- At present, land administration service comes under 'general administrative service'. It is suggested that there should be 'integrated land service' sub-group within the 'general administrative service'. Under this, there will be further two sub-groups – 'land management service' and 'survey'. There should be no restriction as to who should be the district chief of D-LAMO.
 - The internal structure of the proposed D-LAMO should be decided based on the needs of the district. For example, Guthi section may not be needed in districts where there are not many Guthis.
 - The name of district office then should be District Land Administration and Management Office (D-LAMO).
 - In matters which require political decisions and people's participation (like land reform and land use planning), DLAMO will work closely with DDC. This helps DLAMO to implement the decisions made by the local government, which will have more roles in future because of decentralization.
 - Regarding Guthi management, there will be a separate arrangement through 'Guthi Authority' as explained above.
- **Public-private partnership:** The following activities can be conducted in partnership with private agencies:
 - Developing maps.
 - Surveying/resurveying land.
 - Checking and verifying necessary documents in the office (eg. through notary-public).
 - Training or development of human resources in land surveying and land administration.

6. Major Policy Actions (Guidelines/principles provided) and their Timeframe:

Major Policy Actions	Immediate (within 1 year)	Medium term (1-5 years)	Long term (5-10 years)
Land Policy Formulation (one 'integrated land policy' stipulating priorities clearly and with decentralized process, and for the use of improved technology and private agencies).	*		
Legal Reform – One 'integrated land law' - guidelines specified – helping to facilitate modernization in administration and inclusion of new rights and equity concerns.	*		
Use of improved business process and use of IT (reducing paper-based system)		*	*
Using simple parcel information (boundaries and number)		*	
Using 'total station-based survey' in all urban areas (municipalities) producing controlled parcel maps		*	*

Using GPS-based survey in all rural areas		*	*
Parcel-based indexing of records		*	
Merging 'Goswara' with Survey Office, and giving responsibility of survey/resurvey to Survey Office		*	
Developing policy on adjusting land tax (urban) based on land value, and updating the valuation annually.		*	
Develop mechanism to solve disputes out-of the-court; more power to local agencies to solve the problem.		*	
Simplifying deed system		*	
Experimenting with land titles in one DLROs			
- Exposure and observation of international experiences	*	*	
- Developing policies to shift to title system		*	
Setting up land valuation authority		*	
Registering all lands (including state property and hal-sabik)			*
Bringing Guthi property under DLRO/MLRM for managing Guthi property.		*	
Formation of 'Guthi Authority' under the 'ministry' that looks after the cultural affairs.		*	
Identifying Guthi activities as national, regional and local and developing institutions for their management		*	
Respecting tenant rights and disposing off Guthi lands which are used, and then converting all others as public (Guthi) property.		*	
Converting Niji (private) Guthis into public or community Guthis.		*	
Formulation of Master Plan for Land Use (nationally and for all districts - guidelines provided).		*	
Housing policy for urban areas (being done, need matching with land policy).		*	
Study on 'consolidation of scattered and fragmented settlements'.		*	
Formation of High Level Land Reform Commission and formulation of land reform policies	*	*	
Formation of 'land tribunals' in each district to fix land ceiling in each district, finding the land for improvement, identification of genuine people to be supported through land reform, unregistered tenants, and for solving the disputes on land registration once and for all.		*	
Increase (to 50 %) subsidy in taxes in land registration for women and disadvantaged groups	*		
Provide opportunities for training of staff in modern technology (computer-based land administration)		*	*
Develop 'code of conduct' for writers	*		
Develop process for privatization of land survey/resurvey, checking documents and for training		*	*

staff.			
Strengthening MLRM's training center for giving orientation and refreshment training.		*	
Forming regional branches within MLRM's training center for regional level orientation and refresh training.		*	
Establishing 'land service' under civil service.		*	
Bringing under one roof all land related offices in districts		*	
Building own office for land administration in all district			*
Re-organization of departments within the ministry for better co-ordination		*	
Study about transfer of cost to users and stakeholders incurred in modernization and efficiency in service delivery		*	
Formation of 'inter-ministerial co-ordination committee' for better co-ordination among ministries related to land under the guidance of NPC.		*	

Total cost of implementation of these policies for ten years would be Rs 10.3 billion (1st year Rs 27 million, 2nd year Rs 4.9 billion, and 3rd year Rs 5.3 billion). Details budget is provided below.

7. Cost⁷ of policy action (Rs in million):

Major Policy Actions	Immediate (within 1 year)	Medium term (1-5 years)	Long term (5-10 years)
Land Policy Formulation (one 'integrated land policy' stipulating priorities clearly and with decentralized process, and for the use of improved technology and private agencies)	10		
Legal Reform – One 'integrated land law' with guidelines specified. – helping to facilitate modernization in administration and inclusion of new rights and equity concerns.	10		
Use of improvised business process and use of IT (reducing paper-based system to be gradually reduced.		300	700
Using simple parcel information (boundaries and number)		-	
Using 'total station-based survey' in all urban areas (municipalities) producing controlled parcel maps		2000	2140
Using GPS-based technology for parcel maps in all rural areas		1400	1400

⁷ This cost has been estimated based on rough calculation and the experience of team members who had worked in MLRM, Survey Offices and other land related institutions for a long time. This is just an indicative amount.

Parcel-based indexing of records		100	
Merging 'Goswara' with Survey Office, and giving responsibility of survey/resurvey to Survey Office		10	
Developing policy on adjusting land tax (urban) based on land value, and updating the valuation annually.		3	
Study to develop mechanism to solve disputes out-of-the-court and at the local level.		4	
Simplifying deed system.		10	
Experimenting with land titles in one DLROs			
- Exposure and observation of international experiences	2	3	
- Developing policies to shift to title system		2	
Setting up Land Valuation Authority		10	
Registering all lands (including state property and hal-sabik)			100
Bringing Guthi property under DLRO/MLRM for management		10	
Formation of 'Guthi Authority' under 'ministry' that looks after cultural affairs.		100	
Identifying Guthi activities as national, regional and local and developing institutions for their management		5	
Respecting tenant rights and disposing off Guthi land which are used, and then converting all others as public Guthi property.		5	
Converting Niji (private) Guthis into public or community Guthis		6	
Formulation of Master Plan for Land Use (nationally and for all districts) with guidelines provided)		20	
Housing policy for urban areas (being done, need matching with land policy)		2	
Study in the consolidation of scattered and fragmented settlements		5	
Formation of High Level Land Reform Commission and formulation of land reform policies	4		
Formation of land tribunals in each district to fix land ceiling in each district, finding land for improvement, identification of genuine people to be supported through land reform, unregistered tenants, and for solving land registration disputes once and for all.		75	
Increase (to 50 %) subsidy in taxes in land registration for women and disadvantaged groups	-		
Provide opportunities for training of staff in modern technology (computer-based land administration)		100	300
Develop 'code of conduct' for writers	1		
Develop process for privatization of land survey/resurvey, checking of documents and for training of the staff.		20	30

Strengthen MLRM training center for giving orientation and refreshment training		10	
Forming regional branches within MLRM's training center for regional level orientation and refresh training		30	
Establishing 'land service' under civil service		2	
Brining under one roof all land related offices in districts		75	
Building own office for land administration in all district		600	600
Re-organization of departments within MLRM		2	
Study about transfer of cost to users and stakeholders incurred in modernization and efficiency in service delivery		5	
Formation of 'inter-ministerial co-ordination committee' for better co-ordination among the ministry related to land under the guidance of NPC.		1	
Total cost for major policy action	27	4915	5294

8. Policy for sustainability of reform:

Reform in MLRM to provide efficient services and include new rights and concerns also require additional cost as mentioned above. Moreover, MLRM should also need to continue task of modernizing and updating records, which also requires additional resource and its continuous generation. This needs to be done in the following way.

- Transferring a part of the cost of modernization and efficiency in service delivery to the users and stakeholders.
- Using private agency in surveying, resurveying and in verifying the documents, and in training and education.
- Increase in land tax, especially in urban area based on market value, which is updated every year. This will also discourage hoarding land.
- Using users pay principle – like in valuation, adjudication and the like.

9. Role of external agencies in implementing land policy framework:

Implementation of the proposed activities requires support from external agencies at least in the initial phase. Even though the total cost for implementation of these activities would require about NRs 10.3 billion, there are some areas where support from external agencies are crucial, which are outlined below. The first item as mentioned below need immediate support as it would also determine or shape other activities.

1. Developing policies and regulations: Immediate support is required in forming two policies (National Land Policy, Master Plan for Land Use) and an 'Integrated Land Law'. Three different 'inter-ministerial committees' need to be formed for each of these activities. Development partners agencies should support them with technical assistance (TA) in which external experiences can be brought in through experts in required areas. About NRs 40 million is required for these activities.
2. Institutional reform: The need is first to study and pilot how to conduct this reform. The present policy framework provides guidelines as to where reforms are needed and what changes are necessary. But a detailed study is necessary as to the changes required and cost involved. Support from development partners is also required to deal with

redundant employees. But first a support for the study will be required. This would cost about NRs 10 million.

3. Support for developing human resources is also necessary. As public-private partnership has been emphasized in this regard, support to train government staff is necessary. A new course on integrated land management needs to be introduced and both technical and financial supports are required for university and government. A study is required for this, which requires support from development partners.
4. Government is thinking of introducing 'title-based' registration system to replace the present 'deed' system. In practice, performance of the both systems differs from country to country. In some cases 'deed system' is also working well and in some even the 'title-based' system is not performing well. Some observation of the good and bad cases of both systems will give insight regarding comparative advantages and disadvantages of these systems. For this an expert team needs to visit some countries like Canada, UK, Israel, USA and Netherlands. As the cost of the implementation of title-based system is very high, it is necessary to have a full consideration of pros and cons of the new system and how it is practiced. Approximately Rs 10 million is required for this.
5. There is a need for greater use of electronic system in business process for efficiency in service delivery. The pilot study conducted under the TA has shown that use of computers and reengineering of the business process could reduce time for service delivery, improve transparency and reduce corruption. A detailed study is required as to how this can be implemented and how much it costs.
6. As Government is developing policies for land reform, it is useful to draw on the experiences of other countries. Accordingly, it is advantageous if government officers and political persons have an observation of ground reality regarding land reform taken place in other countries. The possible places could be India (west Bengal and Kerala), Brazil, South Africa, and Philippines. Approximately NRs 10 million is required for this.
7. Before implementing land reform policy, clear answers are needed regarding some of the contentious issues like land ceiling, identification of needy people requiring access to land, and government's roles and responsibilities in terms of providing land. The answers to these issues have to be searched through objective studies and discussions among stakeholders. These activities will also help in developing consensus among the stakeholders regarding land reform policy and its implementation mechanism. Support from development partners for these studies and in the organization of discussions is required. Civil societies (NGOs and CBOs) are in appropriate position to conduct the studies and organize discussions, the findings of which are fed to 'land reform commission'. Approximately Rs 20 million will be required for this, and selected agencies need to be funded through competitive approach.
8. Support from development partners is required for implementation of Total Station-based Survey in urban areas. A study is required as to how to implement this system and how much it would cost. At present, it is tentatively estimated at NRs. 4 billion. This survey system generates information which is accurate. From the present trial in Dhulikhel area, this seemed to be an appropriate method for the urban areas.