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# **Draft National Land Reforms Policy**

**18<sup>th</sup> July 2013**

**DRAFT FOR DISCUSSION PURPOSES AND COMMENTS**

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Ministry of Rural Development  
Government of India**

## **CONTENTS**

<b>S. No.</b>	<b>CHAPTER</b>	<b>PAGE</b>
1.	Introduction	2
2.	Land Use Plan	4
3.	Assignment of Land to the Landless Poor	4
4.	Protection of Lands belonging to Scheduled Castes, Scheduled Tribes and other Marginalized Communities	8
5.	Scheduled Tribes and Land Access	9
6.	Land to the Nomads	16
7.	Land Rights to Women	17
8.	Homestead Rights	19
9.	Common Property Resources	20
10.	Tenancy	23
11.	Land Acquisition	23
12.	Land Bank	24
13.	Resolving Land Problems including litigation	25
14.	Modernization of Land Records	28
15.	Empowerment of Gram Sabhas in Scheduled Areas	30
16.	Land Administration	31
17.	Training and Capacity Building	33
18.	State Land Rights Commission	35
19.	Implementation of this Policy	35

# **DRAFT NATIONAL LAND REFORMS POLICY**

## **I. Introduction**

India, being a predominantly agricultural society, has a strong linkage between land and social status of an individual. The fact that close to 70 % of the population is dependent on land, either as farmers or farm laborers, means that it is imperative to address the issue of land in such manner that it provides livelihood, dignity and food security to millions of Indians. India has the largest number of rural poor as well as landless households in the world. Landlessness is a strong indicator of rural poverty in the country. Land is the most valuable, imperishable possession from which people derive their economic independence, social status and a modest and permanent means of livelihood. But in addition to that, land also assures them of identity and dignity and creates condition and opportunities for realizing social equality. Assured possession and equitable distribution of land is a lasting source for peace and prosperity and will pave way for economic and social justice in India.

2. Land reform was a major policy initiative in the country in the 1950s and early 1960s. However, after abolition of Zamindari and Proprietary Rights, other measures like ceiling on land holdings, while became a part of the legal framework, did not get implemented in the true spirit except in some states like West Bengal, Kerala and Jammu & Kashmir. In other parts of the country, the petty attempts of declaring surplus land for distribution to the poor was caught up in the web of infinite litigation. In order to shift the policy from providing benefit to recognizing the right of the sovereign people over land, radically different and comprehensive approach will be required. The way land use has shaped up in recent years raises several issues and land reform has become much more relevant today than ever before. The increasing demand of land acquisition for housing, industrialization and several other purposes; diversion of agricultural land for non-agricultural purposes; the stagnating agricultural yields and the empirical evidence on the utility of small farms, all point towards the revisiting the issue seriously. More importantly, inequitable distribution of benefits from the new land use, insufficient quantity of compensation, and rehabilitation not being implemented properly is leading to enormous dissatisfaction among the affected people. This ultimately is leading to social unrest and violence in some parts of the country. To address these, it is imperative that grievances of those affected are met adequately thorough a revisit to a comprehensive land reform agenda. Increasing participation of women in agricultural labour and other farm activities also calls for a policy strategy that addresses the issue of access and land holding rights to women.

3. In short, to address a number of critical issues related to land in the current juncture, the need for a National Land Policy today is more urgent than ever before. Such a policy would be based upon Tehsil, District, Region and State level master plans. This will clearly delineate areas unfit for agricultural use and therefore reserved for industrial and other non-agricultural purposes, obviating and minimizing the need for acquisition of land that gives rise to displacement, landlessness and unrest. This policy outlines a very clear strategy of creating a large pool of land so that every family's right to land is fully honoured. The policy proceeds to suggest a just and equitable method of allotting land on a priority basis to the marginalized, especially marginalized women. Policy provisions are also made in

such a way that common property resources supplement the needs of the poor and deprived.

4. According to data from the Ministry of Environment and Forest nearly 47% of India's land is used for agriculture, followed by 22.6% as forested and 13.6% as non-cultivable (roughly 41 million hectare). The Central Statistical Organisation (CSSO) data also puts the percentage distribution of country's total land area near the same (22.2% forests, 13.3% uncultivable; 3.3% as permanent pastures and other grazing land, 1.2% under tree crops included in net sown area, 5.1% cultivable wasteland, 8.2% fallow-land, and 46.3% net sown area). According to the India Rural Development Report of 1992, nearly half of the country's rural population was absolutely or near landless. Landlessness has been steadily rising among the Schedule Castes and Schedule Tribes. According to NSSO data (2003-04) about 41.63% of households do not own land other than homestead. The data (Table 2) also shows that while one third of the households are landless, those near to landlessness add up one third more. The next 20 per cent hold less than 1 hectare. In other words, 60 per cent of the country's population has right over only 5 per cent of country's land; whereas 10 per cent of the population has control over 55 per cent of the land.

<b>Category</b>	<b>Proportion of Households (%)</b>	<b>Proportion of Area Owned (%)</b>
<b>Landless</b>	<b>31.12</b>	<b>0</b>
<b>Less than 0.4 ha</b>	<b>29.82</b>	<b>5.11</b>
<b>0.4-1 ha</b>	<b>18.97</b>	<b>16.89</b>
<b>1 -2 ha</b>	<b>10.68</b>	<b>20.47</b>
<b>2-3 ha</b>	<b>4.22</b>	<b>13.94</b>
<b>3-5 ha</b>	<b>3.06</b>	<b>16.59</b>
<b>5-10 ha</b>	<b>1.6</b>	<b>15.21</b>
<b>More than 10 ha</b>	<b>0.52</b>	<b>11.77</b>

*Source: Distribution of Ownership Holdings of Land, India (NSSO 2003-04).*

5. The National Land Reforms Policy focuses on those aspects of land reforms which if implemented in true letter and spirit will have the potential to tilt the balance in favor of the landless and poor. These are the mechanisms of preparing a land use plan for every village getting aggregated at higher levels which will guide the best utilization of each and every parcel of land, putting in place policies and systems for ensuring effective distribution of land to landless poor, protecting them from losing their lands, restoration of alienated lands, effective safeguards for lands of the Scheduled Castes and Scheduled Tribes, ensuring homestead rights, tenancy rights, land rights for the women and effective usage of common property resources. The Policy not only stresses upon the need to improve the delivery system with regard to litigations but also emphasizes the need to support the demand side by putting in place support systems for the poor which will help them in effectively liaising with the land administration department. What follows are the important elements of the Policy for all States with the exception of the North-Eastern States:

## **II. Land Use Plan**

The state shall, based on the information from the land use plan for the tehsils, districts, regions and states, prepare with the help of modern scientific methodologies, a detailed and comprehensive survey and documentation of the existing land area, its use, titles, and all the information relating to the land, so that its possible potential use can scientifically be determined. A creative integration of the state plans on the one hand and the national perspective of development plan on the other will result in a comprehensive national land use plan that not only takes into account the development needs of the country but also the best utilisation of a particular type of land, respecting the rights and opinions of the communities and the people, especially women and marginalized groups. Such a plan will help limit land acquisition and minimise displacement.

## **III. Assignment of Land to the Landless Poor**

Recognizing the need for land among the poorer sections of the society, many State Governments had come up with land distribution programmes to facilitate land ownership for the poor. The Government land which is vacant and is fit for cultivation was assigned to the landless poor for cultivation purposes. Similarly the land which is suitable for dwelling purposes was given to the rural poor for their housing/homestead purposes. In addition to the Govt. lands, other categories of land like the ceiling surplus lands, bhoodan lands etc. were also distributed to the landless poor for cultivation purposes. This assignment of lands had its conditions such as the land being heritable, but not alienable etc. Sizeable extents of lands thus were distributed in many States. Field observations show that many of these lands are fraught with issues relating to possession, boundary disputes, successions, encroachments etc. making further investments in the land difficult thus making a very little impact on the livelihoods of the assignees.

It is also seen from the field that even after all these interventions the landlessness or near-landlessness among the poor, especially the Scheduled Castes and Scheduled Tribes, is considerable and the demand for land is still being unmet. Hence, the States shall have a comprehensive plan for assignment of lands and their management which shall also include plans for their development and increase in productivity and incomes.

### ***(a) Creation of land pool***

- i. In order to provide homestead land, minimum agricultural land, and shelter to every family, it is essential that a land pool is created. The smallest unit in this case will be a village or a cluster of villages, as the case may be, because it is not realistic to expect people to migrate long distances for obtaining their rights. The utilisation of the land pool for the purpose of homestead land or agriculture shall begin as soon as the pool is created at the village / cluster level.
- ii. States shall work towards the creation of a land pool within a specified timeframe comprising of, amongst others –
  - (a) agricultural waste land, whether illegally encroached or otherwise;
  - (b) restoration of land acquired, purchased and/or leased out to industries etc. or acquired for development purposes/ projects but remaining unutilised, (c) surplus ceiling land by removing illegal occupation on those,

- (d) Bhoodan land by removing illegal occupation on those ,
- (e) Land being made available by correction of land records following reconciliation of forest land and revenue land and
- (f) Panchami land in Tamil Nadu/assigned land in Andhra Pradesh/ Gairan land in Maharashtra also by removing illegal occupation on those.

***(b) Assignment policy –***

The States shall explore all available opportunities to create and maintain a land pool in every village. For this purpose, the States shall

- i. Conduct an inventory of government, ceiling surplus, bhoodan and other categories of lands with the help of landless poor, Gram Panchayat, SHGs of women, and Civil Society Organizations, under the supervision of Revenue Authorities. As part of the inventory, comprehensive details about these lands including details of current enjoyers should be collected and the details should be made available to people.
- ii. Evict ineligible encroachers of government lands, ceiling surplus and bhoodan lands and distribute to the landless poor.

***(c) Time-bound assignment of land***

- i. Distribute/Assign/Allot the available land to eligible land less poor, particularly the Scheduled Castes, Scheduled Tribes and other marginalized and deprived landless in a time bound manner both for agriculture and house sites. The allotment of land should be made in the name of women member in the eligible family. The list of beneficiaries should be prepared with the approval of Gram Sabha. The list of beneficiaries should be made available to the public.
- ii. Settle all the pending applications for regularization of unobjectionable occupations of government land by conducting a special drive in a time bound manner.

***(d) Ceiling surplus lands***

There is an urgent need to re-visit the land ceiling limits in different categories. Excluding the achievements of some States like West Bengal, Kerala, and Jammu and Kashmir, the imposition of land ceilings has not led to any worthwhile redistribution of agricultural land in the rest of the country. Some of the suggestions are:

- i. Every state should revise its ceiling limits, if the existing limit is more than 5-10 acres in the case of irrigated land and 10-15 acres for non-irrigated land.
- ii. Exemptions to religious, educational, charitable, research and industrial organizations as well as plantations and aqua farms should be strictly discontinued. These institutions shall not be allowed to use more than one unit of 15 acres.
- iii. States shall adopt 'single window' system for re-distribution of ceiling surplus land within a specified time frame.

- iv. All States shall impose ceiling not only on 'Ownership' of land holdings but also on 'Operational' land holdings to prevent concentration of large tracts of land through lease-in. Under no circumstance shall a person/institution/organisation be allowed to own more land than the ceiling.
- v. For the purpose of curbing and monitoring evasions of ceiling laws through fraudulent land transactions, the Benami Transactions (Prohibition of the Right to Recover Property) Act, 1989 shall be appropriately amended.
- vi. All the ceiling surplus lands, which are stated to have been distributed to the landless poor, shall be physically verified to see whether the assignees are in possession and enjoyment of these lands. If not, steps shall be taken to see that the assignees are given possession of lands.
- vii. States shall prepare and maintain an inventory of all ceiling surplus lands and make it available for public scrutiny.

### ***(e) Bhoodan lands***

- i. State governments, which have not distributed Bhoodan land, should conduct a survey within one year ascertaining the status of such land. The survey in addition to recording the present physical status, history of the allotment of titles, the incidence of irrigation, the present possession, the title of the donor etc. shall also indicate clearly lands which are unfit for settlement. This Survey will also include the lands that are already distributed for ascertaining their possession and the extent of sustenance. The State Governments shall apply all their resources including Amins and Surveyors from other Departments, Gazetted Officers and others to complete the survey work within one year, while keeping the sanctity of the time frame. The Panchayats, the Civil Society Organisations and the SHGs and their federations working with the people in the area will also be associated with the Survey.
- ii. The respective Bhoodan Yagna Acts may be amended to provide that if at any time subsequent to the confirmation of the Danapatra in course of any enquiry or otherwise it transpires that the land is not being used for the purpose for which it was donated the occupant thereof may be ejected by means of summary proceedings. In all such cases the competent authority may proceed to settle that land with suitable persons of eligible categories notwithstanding the subsequent transactions in the land or the interest acquired by the land subsequent to the donation.
- iii. The inventory of Bhoodan lands, thus prepared and digitized, shall be made available for public scrutiny.

### ***(f) Government lands***

The other category of land, which is wasteland (this term although needs to be redefined), is estimated to be around 63.85 million hectares (20.17 per cent of the geographical area) in India. There shall be an exercise undertaken by the Wastelands Division of State with the support of the Ministry of Rural Development to identify and quantify these lands in terms of the sustenance they provide to populations in non-cultivable manner. Further, the Gram Panchayat should be made in-charge of the well-defined wasteland in the purview of a Panchayat.

### ***(g) Redistribution of un-utilised lands acquired or allotted for public purpose***

There is a great amount of land that the State allots to various agencies (both public and private) for various purposes through acquisition, selling or leasing out. It is important to see that the land which is not used within five years in accordance with the purposes, for which it was allotted, shall come under the State Government's Land Pool by reversion. The proposed land acquisition law gives the State Government the option to return unutilized land to the original owner before placing it in the land bank. States may explore similar arrangements for lands which have been taken by acquisition in previous years and continue to be unutilized.

Upon every transfer of land without development, 20% of the appreciated land value shall be shared with the original land owners. The first claim on the Land Pool with the State Government shall be of the land less poor. The land distribution and allotment to the landless poor from the Land Pool shall be carried out in a time bound manner subject to the availability of land.

### ***(h) Lands belonging to religious institutions***

- i. The States have considerable extents of lands donated to different religious and charitable institutions by private land owners, the income from which has to be used for their development and maintenance. These endowments have a stated purpose at the bequest of the donor. Depending on the nature of the institutions, these lands are generally administered by either the Department of Endowments or the Wakf Boards.
- ii. The administration of Endowment and Wakf lands needs better management. There has been no clear strategy for the protection of the endowment lands and ambiguity prevails as to how these lands can be administered. Further, considerable extents of these lands are under occupation of poor and equally considerable extents are under illegal encroachment by non-poor. In some States, there is a practice of allocating these lands on lease. Despite specific directions from the Supreme Court that a public auction must be conducted for disposal of endowment lands, invariably more often than not the auctions are held in secret and are sold to private parties for small amounts of money. Such practices are benefiting neither the poor nor the institutions for whose benefit the endowments/donations were made.
- iii. In view of the above, the States shall prepare an inventory of all endowment and wakf lands, remove all illegal occupations and shall take steps to lease out the lands to landless poor on equitable terms of lease. Such an action will be a win-win to both the landless poor and the institutions also as the institutions will get an assured income every year to sustain them.

## **IV. Protection of lands belonging to Scheduled Castes (SCs), Scheduled Tribes (STs) and other marginalised communities**

### ***(a) Review existing laws and policies***

The guiding principle for the States shall be that no parcel of land, irrespective of the category of land in which it falls, where there is a clash between title and possession shall be left unsettled. The States shall review existing law and policies pertaining to alienation/transfer of land belonging to Scheduled Castes and Scheduled Tribes and take necessary steps for removing the constraints, if any, in protecting and restoring the allotted and other lands belonging to SCs and STs.

### ***(b) Restoration of alienated lands***

Protection and restoration of poor peoples' lands shall be topmost in the land agenda of the land administration mechanism in the States. The State Governments shall use this policy as providing guidelines to plug the loopholes in existing State laws on the subject and shall take steps to –

- i. Physical verify all the lands granted to SCs and STs by involving landless poor, local youth and SHGs of women, under the overall supervision of Revenue Authorities.
- ii. All cases of alienation or transfer or unauthorized occupation of lands in violation of existing laws should be identified and necessary steps should be taken to restore the land back to the poor.
- iii. All the restored lands should be recorded in the name of women family member.
- iv. The Registration Department shall strictly be instructed not to entertain any transactions on these lands.

### ***(c) Prevention of distress sale***

Distress sales are another way by which the rural poor keep on losing their lands even if every other safety measure is ensured to secure their title and possession. The rural poor are highly vulnerable and are prone to succumbing to various unforeseen (and hence unprepared for) exigencies at the home front like ill-health, marriages, education expenses etc. These factors coupled with the inability of the rural poor to access institutional credit at the right time compel the rural households to sell off their lands at meager prices. Hence, it becomes very important for the States to not only facilitate access to more and more lands to the poor, but also to support them in not losing their lands. The States shall consider taking the following steps:

- i. Institutionalizing a Land Protection Fund in either the Gram Panchayats or the Community Based Organizations/SHG Federations at village level
- ii. Keeping a watch on the poor peoples' lands in the villages

- iii. Extending credit support from the Land Protection Fund (with interest subvention and easy installments) whenever any poor family is going for distress sale of their land to meet some exigency.

#### ***(d) Land Development***

Presently lot of opportunities are available for developing the lands belonging to the poor by accessing various Central and State Government schemes such as MGNREGA, Watershed Development Program and NABARD supported Rural Infrastructure Development Fund etc. in a specific time frame. The States shall prepare an inventory of lands of the poor which require development and systematically take up land development works on those lands. Priority shall be saturation of all lands belonging to Scheduled Castes and Scheduled Tribes first. As far as possible, land development works shall include provision of irrigation facility also with again priority to SCs and STs lands. Along with land development all other sustainable agriculture programmes available for increasing productivity shall be linked to these lands so that the poor can earn good incomes from the lands.

### **V. Scheduled Tribes and Land Access**

#### ***(a) Land transfer regulations***

- i. A report by the Land Reforms Division ([http://dolr.nic.in/land\\_reforms.htm](http://dolr.nic.in/land_reforms.htm)) states that “3.75 lakh cases of tribal land alienation have been registered so far, covering 8.55 lakh acres of land, of which 1.62 lakh cases have been disposed in favor of tribal covering a total area of 4.47 lakh acres. 1.54 lakh cases covering an area of 3.63 lakh acres have been rejected by the Courts on various grounds. Gram Sabha and Panchayats have powers to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any alienated land of Scheduled Tribe Under the Panchayat (Extension to Scheduled Areas) Act (PESA). In this regard, there needs to be a clear procedure laid down and the nature and extent of powers which are to be vested, specifically with the Gram Sabha, needs to be spelled out in the rules to the PESA. Any appellate procedure against such an action needs to be taken up at the level of special courts and tribunals set up under the Constitution of India with special regulations to be framed by the Governors.
- ii. A special structure for providing legal aid in cases of tribal land alienation independent of normal procedure for legal aid needs to be provided for. Urbanization, in form of creation of municipalities or incorporation of towns and cities should not be allowed unless a separate Act similar to PESA is introduced for extension of municipal laws into scheduled areas.
- iii. In case of revenue land, the State should take following actions:
  - 1) Existing laws pertaining to alienation/transfer of land belonging to Scheduled Tribes should be reviewed to identify the constraints, if any, in protecting and restoring the allotted and other lands belonging to STs. And necessary changes may be brought in to the existing laws

to effectively prohibit the alienation/transfer of their land belonging to STs.

- 2) Physical verification of all the lands granted to STs may be undertaken by involving landless poor, local youth, women's Self Help Groups (SHG), under the overall supervision of Revenue Authorities. All cases of alienation or transfer of lands in violation of existing laws should be identified and necessary steps should be taken to restore the land back to the poor.
- 3) In some States, title has been granted to non-tribals in Scheduled Areas though there are Land Transfer Regulations prohibiting such transfer and clear cut assumption that all land in Scheduled Areas belongs to tribals. All such cases shall be reopened to examine case by case genuineness of such settlement in favor of non-tribals and corrective steps shall be taken to see that all fraudulent transactions are cancelled.
- 4) States shall take steps to see that the land administration machinery in tribal areas works in a pro-tribal manner and is well-versed with all protective enactments/judgments etc. to prevent passing of awards in favor of non-tribals in a huge number. Wherever such incidents are noticed, the State shall take stringent action on the functionaries responsible.
- 5) Distress sales of STs land should be prevented by introducing appropriate schemes including purchasing of lands by government.
- 6) Steps should be taken to identify the lands belonging to ST/SCs which can be developed by accessing various Central and State Government schemes such as MGNREGS, Watershed Development Program, and NABARD supported Rural Infrastructure Development Fund etc., in a specific time frame.

### **(b) Forest Rights Act**

- i. The process of identification of hamlets or settlements for the purpose of the Forest Rights Act 2006 (FRA) shall be as specified under Rule 2A of the FRA. All the States are to complete the identification process within a period of one year and ensure that the Gram Sabha of these hamlets constitute the Forest Rights Committee.
- ii. Primary importance is to be given to Community Forest Resource Rights [Sec.3(1)(i)] of FRA. All villages/hamlets shall claim and obtain Community Forest Resource (CFR) Rights and in case there are villages/hamlets who do not claim or obtain CFR rights, it shall be incumbent on the District Level Committee to record in writing the reasons thereof [See 'iv. Community Forest Resource Rights' of 'Guidelines on the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006', No.23011/32/2010-FRA [Vol.II (Pt.)], Ministry of Tribal Affairs dated 12 July 2012]. Further the Gram Sabha shall constitute a Forest management Committee as envisaged under Rule 4(e) to protect, conserve and manage the CFR area, including its resource use, under instruction from the concerned Gram Sabha.

- iii. The State government through its State Level Monitoring Committee constituted under FRA shall review the above and inform the Ministry of Tribal Affairs. It shall also monitor effectively the process of determining and approval of all the rights under Sec.3 (1) and (2) category wise ranging from:
- (1) individual rights
  - (2) community rights
  - (3) rights of ownership, use and disposal of Minor Forest Produce
  - (4) rights to community tenures and habitat rights to particularly vulnerable tribal groups
  - (5) rights in and over disputed land
  - (6) rights of conversion of pattas or leases or grants
  - (7) rights of settlement and conversion of all forest villages, unsurveyed villages and other villages in forest whether recorded, notified or not in to revenue villages
  - (8) traditional rights
  - (9) rights to in situ rehabilitation including alternate land for displaced persons
  - (10) development rights under 3(2) .

The committee shall review and ensure that all cases of large scale rejection of claims (and modifications to what is claimed) are referred back to the DLC for their reconsideration and/or rectification and due process is followed. Further the process of acceptance of claims and implementation of FRA should not be subjected to arbitrary deadlines. The Gram Sabha is empowered to continue the process till the complete implementation of FRA. The committees at the higher level shall not insist on any specific evidences for approval of rights decided upon by the Gram Sabha. Further all safeguards under S4 of the Act in respect of recognition of rights and resettlement should be adhered to in case of critical wild life habitats, national parks and sanctuaries.

- iv. The State government through its State Level Monitoring Committee constituted under FRA shall review all diversion of forests for non-forestry purpose since January 1<sup>st</sup>,2008 and particularly from 30 July 2009 and inform the Ministry of Tribal Affairs whether these diversions comply with the order of the Ministry of Environment & Forest [F.No.11-9/1998-FC(pt) dated 30 July 2009] under the Forest (Conservation) Act, 1980 ensuring compliance with the FRA 2006, particularly in relationship to whether the rights under FRA is completely recognized and consent for diversion is obtained from the concerned Gram Sabhas. Further the Committee shall monitor and ensure that this order is complied with in all future proposals of the State for such diversion to ensure that the rights of forest dwellers are protected.
- v. The State government through its State Level Monitoring Committee constituted under FRA shall review all notifications and proposed notifications of Tiger Reserves (core area or critical tiger habitat and buffer area) for its compliance with Sec.38(V) of the Wildlife Protection

Act 1972 as amended in 2006 read with Sections 2(b), 4(2), 4(5) and 5 of FRA and inform the Ministry of Tribal Affairs. In case there has been a violations of these legally mandatory provisions, it shall recommend steps to rectify them if necessary by withdrawal of such notification and re-initiating the procedures as per the laws. This is to ensure that the land rights including rights to resources on these lands, individual, collective and community rights, are respected.

- vi. The Ministry of Tribal Affairs shall ensure that the State Level Monitoring Committee send their reports on a monthly basis and take cognizance of the recommendations. The Ministry shall take proactive steps for follow up action at the State level through issue of advisories and/or directives under Para 5 of Fifth Schedule applicable not only for Scheduled Area but to all Scheduled Tribes. Where necessary the Ministry shall not desist from taking legal and other appropriate action against offenders.
- vii. The State government shall ensure allocation of funds to the concerned Gram Sabhas for (a) the protection and conservation of forests within the CFRs of the villages and (b) follow up counselling and guidance sessions post FRA rights recognition to achieve the intended objects of FRA.
- viii. Patta Distribution in the name of the woman, as specified under the FRA, should be implemented with greater vigour and efficiency
- ix. Particularly Vulnerable Tribal Groups should be given exemptions with regard to filing of claims. A definite time frame should also be specified for settling their claims. Furthermore there should be a provision which provides for withdrawal of cases against PVTGs for minor forest offences filed by the State.

### ***(c) Protection of lands belonging to Scheduled Tribes in Scheduled Areas***

- i. Ownership and secure access to land is very important for the wellbeing of the tribal people and land alienation is arguably the most important reason for their disaffection. Studies show that the administration has been ineffective in protecting the corpus of tribal lands and hence section 4(m) (iii) of PESA empowers the community to protect the land resources and habitations of Scheduled Tribes in Scheduled Areas, while Sec.4 (d) additionally recognizes the competence of the Gram Sabha to safeguard community resources and both individual and collective rights to land. The Gram Sabha is empowered to take prompt and appropriate action to protect the corpus of tribal lands, prevent alienation of tribal land and take efficacious steps to restore alienated land to members of the Scheduled Tribe, acting singly or with the support of the Revenue Authorities.
- ii. The Legislature of the State shall enact appropriate laws for effective exercise of the rights, duties and powers of the Gram Sabha with regard to safeguarding the rights of the scheduled tribes over land and shall not make any law which is inconsistent with these rights, duties and powers. The Land Revenue Code of the State and other related land laws shall be amended, if needed, to enable Gram Sabhas to carry out these powers and responsibilities pertaining to

prevention of land alienation and powers of restoration of alienated tribal land.

- iii. Any transfer of immovable property situated in the Scheduled Area by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Co-operative Societies Act of the State which is composed solely of members of the Scheduled Tribes.
- iv. In case of proposed sale or transfer including lease, mortgage of any land/transaction in the village, it shall be made mandatory to inform the Gram Sabha concerned in writing through the Gram Panchayat. All relevant revenue records concerning the proposed sale, transferor lease of the land within 30 days of such request in writing shall be provided to the Gram Sabha concerned.
- v. The Revenue Departments of the States shall make an inventory of all lands in the possession of the tribals and ensure expeditious securing of appropriate titles under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 or Land Revenue Codes or relevant land laws, as the case may be.
- vi. Every State having Scheduled Area shall constitute a 'Land Consolidation Fund' (LCF). Part of this fund shall be allocated at the district level to a designated authority to be notified by the State Government. The designated authority shall release necessary fund to the Gram Sabha for purchase of any land within its jurisdiction in the manner prescribed below. The LCF shall exclusively be used for enabling the Gram Sabhas in the Scheduled Area for the following purpose:
  - 1) purchase at market price of any land falling within the jurisdiction of the concerned Gram Sabha owned by any resident whether a Scheduled Tribe or not, and who is desirous of selling his/her land and has made a request in writing to the Gram Sabha;
  - 2) the land thus purchased shall be in the name of the Gram Sabha of the concerned habitation;
  - 3) the said land shall be put to use for common purpose by the concerned Gram Sabha;
  - 4) the Gram Sabha may allocate such land, partly or wholly as the case may be, to any landless Scheduled Tribe of the habitation with enjoyment rights;
  - 5) the Gram Sabha shall cancel such enjoyment rights if need be and reallocate the same to another landless Scheduled Tribe of the habitation or utilise the same for the common community needs;
  - 6) The Record of Rights with respect to such land shall be in the name of the Gram Sabha.

**(d) Protection of lands belonging to Scheduled Tribes outside the Scheduled Areas**

- i. All the States having a Scheduled Tribe population and that do not have a law to prevent tribal land alienation and restoration shall, within a year, enact appropriate legislation for the said purpose.
- ii. All the states having a Scheduled Tribe population and not having any Scheduled Area shall, within a period of a year, identify those tribal majority habitations with their customary and traditional boundaries and obtain Presidential assent for the same. Similarly habitations in those states having Scheduled Area but are not yet included as part of the Scheduled Area of the concerned State shall also likewise list out such habitations and obtain Presidential assent as Scheduled Area.
- iii. Every State having a Scheduled Tribe population but whose habitations are not within the Scheduled Area shall review the law to protect tribals from land alienation and shall designate Sub-Divisional Magistrates as Special Officers to whom such of those Scheduled Tribes whose land is threatened to be encroached or alienated can complain and obtain speedy measures for protection from land alienation.

**(e) Restoration of Alienated Tribal Land**

- i. A clear and explicit provision should be made in the Revenue Law and other relevant laws to include such provisions in the Land Revenue Code of the State and other laws related to alienation of tribal land that confer power on the Gram Sabha in Scheduled Area and Sub-Divisional Magistrates in non-Scheduled Area to act *suo motu* or on a complaint from a member of the gram sabha or the affected tribal person to restore the alienated tribal land. This should also authorize the Gram Sabha in the case of Scheduled Area to call for all relevant revenue records concerning the alienation of such land (to be provided within 30 days of such request). The law should further empower the Gram Sabha in the case of Scheduled Area to conduct a hearing and order restoration of the land back to the concerned member of the Scheduled Tribe.
- ii. The Gram Sabha in the case of Scheduled Area may direct or seek the assistance of the Police in restoration of the land, if it so desires. Gram Sabha in the case of Scheduled Area shall inform the orders of restoration to the Sub-Divisional Officer who shall ensure restoration within a period of three months, intimate the same to the Gram Sabha and direct appropriate entries in the Record of Rights. The Gram Sabha in the case of Scheduled Area may constitute a Standing Committee from among its members and call upon the Revenue Authorities to train such members in all matters related to the maintenance of records and the exercise of the powers mentioned above.
- iii. States shall put in place effective institutional arrangements for securing land rights for the Scheduled Tribes, in consonance with the architecture given under the FRA and also establish appropriate grievance redressal mechanisms using the FRA template.

***(f) Acquisition of land in Scheduled areas***

- i. Prior consent of the Gram Sabhas and the concerned Panchayats at the appropriate level, affected by the proposed project or located in the zone of influence of any land acquisition project, shall be mandatory for the acquisition of any land in the Scheduled Areas for development projects falling within the jurisdiction of the concerned Gram Sabha, irrespective of the classification of land. Under the proposed Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill 2012 these requirements have already been prescribed as statutory guarantees.
- ii. The procedure for prior consent and arriving at a decision shall be prescribed by the appropriate government under the Rules to the appropriate legislation.
- iii. No displacement/relocation of the person from the project area which is proposed to be acquired shall be undertaken unless all facilities under the rehabilitation package which shall include secure livelihood are certified to be complete and functional at the site of resettlement by the Gram Sabha.
- iv. If the Gram Sabha concludes that the land has been used/transferred for purposes other than those for which informed consent was sought/acquired, and such a claim has been verified by a due process, then the Gram Sabha may inform the State Government its decision in writing to withdraw its consent. Where such withdrawal occurs, the residents of the Gram Sabha shall be entitled to civil damages for fraud and to institute criminal proceedings on the same basis.
- v. The acquired land shall revert back to the Gram sabha in the event that the purpose for which land was acquired is changed or the project is not taken up within five years from the date on which consent is granted.
- vi. Prior consent of the Scheduled Tribe living outside the Scheduled Area shall be obtained for land acquisition along with the consent for the rehabilitation package with secure livelihood.

***(g) Protection of rights over common lands***

- i. Every habitation/hamlet level Gram Sabha shall demarcate their customary and traditional boundary and extent of the habitation/hamlet/group of hamlets as the case may be along with the land use and rights of individuals/groups of people or the community/communities of the habitation/hamlet/group of hamlets as the case may be. This shall be recorded as common lands belonging to the concerned village with consent from the adjoining villages to the veracity of the same.
- ii. The Gram Sabha of the habitation/hamlets/group of hamlets shall be the custodian of the said common land which shall be protected and managed as decided by the concerned Gram Sabha. Any encroachment of the land as deemed by the concerned Gram Sabha shall be removed with, if need be, the assistance of the police and revenue authorities on the request of the concerned Gram Sabha.

### ***(h) Forest and Revenue Boundary Disputes Reconciliation and Settlement***

- i. States shall undertake the survey of the forest and revenue boundary disputed areas by constituting joint survey teams consisting of officers from Forest and Revenue Departments and settle the boundary disputes.
- iii. Once the joint survey clarifies whether it is forest land or revenue land, steps should be taken to allot the revenue land to the eligible poor.
- iv. Without waiting for joint survey, titles should be granted under Forest Rights Act, 2006 to the eligible families. Subsequently, allotment of patta should be made if it is found to be revenue land.
- v. With regard to lands under preliminary notification as Reserved Forest, it is noticed that the forest settlement process has not been taken forward even years after the preliminary notification. The State shall take steps to complete the forest settlement process for all such lands and if the claims of occupants are upheld take steps to issue settlement pattas to them which are superior in nature when compared to the titles issued under FRA. If not, action under FRA can be initiated for granting titles.

### ***(i) Mining in schedule-V areas***

PESA should be taken in to account specifically to provide the populations living in scheduled areas with a right over the natural resources located in the scheduled areas in an effective manner. Mining should not be undertaken in the scheduled areas unless and until the proposal to do so emanates from Gram Sabha or conglomerate of Gram Sabhas. Wherever mining activity is considered to be extremely essential in the schedule areas it must be managed and operated by an enterprise wherein the government and the Gram Sabha or conglomerate of Gram Sabhas are equal partners. This should be done by providing a mechanism whereby the Gram Sabha retains the ownership of the lands being mined and 50% of revenue or royalty benefits should flow to such Gram Sabha or conglomerate of Gram Sabhas as partners.

## **VI. Land to the nomads**

Nomadic communities lead a pitiable existence in today's society. For those nomadic and denotified tribes who are willing and keen to settle down, the State shall take up a program on priority to settle them in an area of their choice. For the purpose habitations with all necessary facilities and conveniences will be set-up. Each family, to begin with, shall be given homestead land and in due course the minimum agriculture land. The Government should immediately bring in to effect a "Right to Minimum Land Holding Act" according to which each Nomadic family (of not more than five persons, larger families getting more allocation in that proportion) shall be allotted at least five acres of cultivable land with assured irrigation. The State shall

- i. Allot at least 5 acres of agricultural land and at least 10 cents of House Site to all nomadic tribes and De-notified Nomadic Tribes who are willing to settle at a particular place.

- ii. Take steps to secure access and rights over common lands to the nomadic tribes and De-notified Nomadic Tribes by giving exclusive rights as a community and not as individuals so as to grow vegetation needed for their artifacts like baskets, brooms, mats etc, along with establishing rearing centers for livestock.

## **VII. Land rights to Women**

Women constitute nearly 40% of the agricultural workforce in the country. More importantly, 75% of all female workforce and 85% of all rural female workforce in the country today is involved in agriculture and this percentage is rising. Further, rural households are increasingly becoming de-facto female headed households, due to widowhood, desertion, or male out-migration. The Eleventh Five Year Plan recognised that agricultural productivity is increasingly getting dependent on the ability of women to function effectively as farmers and strongly and had also recommended for ensuring effective (rights being rights not just in law but also in practice) and independent (rights being rights that women enjoy in their own capacity and of those enjoyed by men) land rights for women. The Twelfth Plan Working Group on Disadvantaged Farmers, including women, has again provided evidence-based assessment of the ground situation. Observing that land rights can serve multiple functions in rural women's lives and would empower them to challenge the socio-economic and political inequalities prevalent in the rural-semi-feudal society, the XII Plan has emphasised on enhancing women's land access from all three sources- direct government transfers, purchase or lease from the market and inheritance- through a range of initiatives including joint land titles in all government land transfers, credit support to poor women to purchase or lease land from the market, increase in legal awareness and legal support for women's inheritance rights, supportive government schemes and recording of women's inheritance shares, and so on. The current land use policy should carry forward some of the following suggested measures (in accordance with those included in the XII Five Year Plan) for improving women's access, particularly from the marginalised sections, to land in following ways:

- i. In all government land transfers, women's claims should be directly recognized, be they transfers for poverty alleviation, income generation (crop cultivation, fish cultivation), resettlement, etc.
- ii. All new homestead land distribution/regularisation to landless families should be only in women's name rather than joint titles with husbands. Where more than one adult woman (say widows, elderly women etc. is a part of the household, the names of all female adults should be registered).
- iii. States should consider the adoption of a "group approach" in land cultivation and investment in productive assets. They may therefore, grant group titles to women's groups. This would require changes in tenancy laws to allow leasing of land to women's groups as well as to recognize such groups as a valid category of landowners.
- iv. States could undertake an assessment of all uncultivated arable land presently with the Government and give women's groups long term usufruct rights to it for group cultivation. The group leasing rights will be recognized under government programmes for agricultural promotion to allow women to avail benefits of schemes such as agricultural extension services and crop insurance to mitigate risks.

- v. Women shall also be helped to purchase land in groups for group cultivation by a loan-cum-grant scheme with 50 per cent of the loan as a low interest loan and the remaining 50 per cent as a grant. Incentives will be provided to women farmers/ SHGs, for group farming on leased or owned land through financial support for group formation; tying credit subsidy, technology access, and so on, to group farming.
- vi. Distribution of land under all land distribution programmes viz., surplus land, land ceiling act, custodial land, bhoodan land etc should exclusively be to rural landless women workers.
- vii. Where new land is being distributed or regularized, individual titles or group titles rather than joint titles with husbands should be provided. Joint titles with husbands give women little control over the produce and which make it difficult for women to claim their shares in case of marital breakup, or domestic violence.
- viii. The 2005 Hindu Succession Amendment Act (HSAA) brings all agricultural land on par with other property. This makes Hindu women's land inheritance rights legally equal to men's across states, overriding any inconsistent State laws. Various provisions need to be reviewed and strategically acted upon. This includes devolution of a woman's property in the same manner as a man's, restricting the right to will to prohibit disinheritance of wives and daughters, protecting women's right to property by eliminating forced coercion aimed at women relinquishing their shares, and ensuring that HSAA overrides State laws related to agricultural land.
- ix. In addition, the Ministry of Women and Child Development in collaboration with the Department of Land Resources, should start intense monitoring of the progress in implementation of HSAA, and ensure its speedy implementation. Revenue officers should be sensitized on the land rights of women and the laws and judicial decisions regarding this.
- x. In case of restoration of land to the allottees/assignee/grantee, the land should be recorded in the name of woman member of the family.
- xi. In irrigation projects, any new land arrangements (that is compensatory land given to displaced persons) must be in the joint names of the man and the woman, or exclusively in the name of the woman where she is the main economic provider.
- xii. Fifty percent of the land pattas given to forest communities should go to women, under any land enactment, including those under the proposed Scheduled Tribes (recognition of forest rights) Bill, 2005 and other revenue land allotments. Rather than giving joint pattas, however, women and men should be given individual pattas. This will give women control over their shares and greater bargaining power. However, where possible a group approach should be followed. Also any new land so distributed should be in terms of group rights.
- xiii. States should strive to promulgate laws that protect women's rights to adequate housing and land, for instance, introduce Government Orders mandating joint registration and joint titles for marital property in the names of men and women.

- xiv. A Committee at the Panchayat level shall be constituted with the responsibility of managing Common Property Resources (CPLRs) comprising only women members.
- xv. There is also need for reliable, fair and accessible mechanisms such as social audit with greater participation of women in the audit bodies for resolving disputes and providing remedies in matters related to tenure and security of lease.
- xvi. Whenever land is allotted/assigned/distributed, it shall be made in the name of the woman member of the family.
- xvii. Record the restored land in the name of woman member of the allottee/assignee/grantee's family.
- xviii. Instruct the revenue authorities to strictly follow the amendment to the Hindu Succession Act in 2005 granting equal rights to women while granting patta in case of inheritance and partition. Revenue officers should be sensitised on the land rights of women and the laws and judicial decisions regarding this.
- xix. Conduct awareness programs to educate women about land laws and land rights.
- xx. Initiate specific institutional measures to restructure current supportive mechanisms like agriculture extension, revenue administration to be more gender sensitive in terms of representation in these systems as well as their interaction with women farmers and landowners.
- xxi. Set up a special help-line, supportive mechanism at Tehsil and district levels, to which women can approach to resolve any issues related to their land rights.

## **VIII. Homestead Rights**

- a. Extreme poverty in rural areas is rooted in landlessness. The poorest and most vulnerable among the rural families are those who are landless and homeless. About 8 million rural households have no house of their own. Land is an essential element of the human right to adequate housing; and that land, as a source of livelihood and security, is essential to realising the right to live with dignity;
- b. Right to equal access to and ownership of a homestead of at least 10 cents would, in addition to enabling a landless and homeless family live with dignity, provide social security and social insurance.
- c. States may identify all the landless and homeless households in the rural areas by conducting a thorough survey involving the gram panchayats. Land available with the Government may be distributed to the landless and homeless households at the rate of 10 cents per households. If Government land is not adequate, suitable land may be acquired. The State Governments may also take steps for developing basic civil amenities for the homestead allotted. The provision of homestead and the amenities may be completed in a phased manner over a period of ten years in every state.

## **IX. Common Property Resources**

i. A long-term perspective on CPRs should be evolved through developing land use plans of each village, State and the country. The D/o Land Resources may prepare a National Land Use Policy and help the States/UTs in preparation of State/UT Land Use Policies.

ii. Evolving long term perspective on land through developing land use plan: A long-term perspective on CPRs should be evolved through developing land use plans of each State. The land use plans should be prepared based on present situation and future needs. More importantly, the land use plans should provide details about how CPRs should be developed considering their importance. Land use plans should be prepared from national and regional levels all the way to the village master plan level. In such plans guidelines should be laid out for land development and allocation. This will foster balance between the development needs and the ecological concerns. It may be considered while preparing National/State/UT Land Use Policies.

iii. Definition of CPR: It is not appropriate to provide a uniform national definition of CPR; however, the perspective through which the CPRs need to be looked at should be defined at the National, State or local contexts. Thus, it is recommended that CPR should be defined according to its importance to support rural livelihoods (land based and livestock based) and ecology as a whole. To add, according to the use of the resources both land and water in a village being used for common purpose, (to meet bona fide livelihood needs should be defined as CPRs) and the definition of CPR based on these conditions should be officially accepted in a State. At a broader level the definition of CPR is – “Rural common property resources are broadly defined as resources to which all members of an identifiable community have inalienable use rights. In the Indian context CPRs include forests, community forests, community pastures, government wastelands, watershed drainages, village ponds and rivers that are used for common purpose. All these resources are particularly important because of their large area and their contribution to people's sustenance.” Along with defining CPR, there should be emphasis on defining common property land resources. Thus, according to the 9-fold classification, the following categories of land should be considered as legal common property land resources:

- Cultivable wastes and Fallows other than Current.
- Common Pastures and Grazing land,
- Protected and Unclassified Forests.
- Barren, Uncultivable and other Government Wastelands that are being used for common purposes.

The state government, after assessment should legally define CPR and the categories of CPLR according to the use of such resources for common purpose in their State.

iv. Minimum percentage of CPR in a village: There should be a provision for having at least some percentage of a total land in a village under CPR. The figure for the same should be based on rationality like number of livestock per hectare of CPR land keeping in mind the growth trend of the livestock population, estimation based on fodder and fuel requirement of the village population based on the trend of the village population growth, or in a general level to meet bona fide livelihoods of the dependent community. The rationality for capping should be decided by the state governments.

v. Banning diversion of CPR land for other purposes: Based on the criticality of CPRs a complete ban on diversion of these resources should be approved. The ban should be imposed on the capped CPR area.

vi. Enumerating CPR in every National Sample Survey: To identify and estimate the magnitude of CPRs in the country the National Sample Survey Organization should enumerate this in every round. The estimation of CPR should also clearly illustrate the contribution of CPRs to support rural livelihoods and ecology. Such accurate estimation of the real CPR will help in formulating appropriate policies based on field realities. The D/o Land Resources should take necessary action regarding survey of the Common Property Resources (CPRs).

vii. Development model of CPR: The development model for CPR should be similar to the JFM model. The entire rights over the management of CPR should be assigned to its users. As in case of JFM funds should be made available for its development both from the central and state governments. There should be a provision to allocate budget for development of CPRs from both union and state budgets every year. To add, dedicated CPR funds should be set up in States and districts for its development.

viii. Institutional arrangements to govern CPR: For proper management of CPR the role of the user groups, the central and state governments, and community based organizations, especially those working on it are critical. The roles of each of the institutions should be laid out properly outlining ownership, access and rights and benefit aspects.

ix.. Management of CPRs may be done by Panchayats through various Government of India schemes, e.g., MGNREGA, SGSY etc. All Central Ministries/Departments should take appropriate action in this regard.

x. Distributive Access -- CPRs are being used historically for distribution to the landless and hence the tradition has meant that the government lands have become land banks. This means that the government lands are the first lands to be distributed. This has further taken the form of alienation of the CPR dependent local

people and land being handed over to the private or individual interests, which is a dangerous trend. The logic of distribution of public lands should be based on:

- Availability of other kinds of lands/private lands for allocation
- Position of implementation of ceiling and availability of surplus lands
- Alternate uses of lands/Opportunity costs of non-diversion
- Land market and prevailing market rates
- Use being made of such allocated lands
- Possibility of off-farm or non-agriculture employment for the landless.
- The ecological role/criticality of such lands

The common property land should not be distributed, as there are a lot of other categories (like barren and uncultivable lands) under which land is locked. Therefore a clear distinction needs to be made between CPRs and wastelands, which might as well be utilized for non-livelihood purposes like mining, quarrying and industry. The surplus land after being capped for the common purpose could be allotted to landless families or other marginalized groups.

xi. Disincentives against encroachment: There should be disincentives against encroachments. The penalty paid by encroachers is paltry which hardly discourages them from encroaching.

xii. Protecting existing *de jure* CPRs: It is high time to safeguard existing *de jure* CPRs. Funds should be made available and investment should be carried out for their development. To add, diversion of existing *de jure* CPRs should be banned.

xiii. The Department of Land Resources should prepare a National Land Use Policy and help the States/UTs in preparation of State /UT Land Use Policies which should take care of CPRs also. The facilities/expertise, etc. of existing/ defunct State/UT Land Use Boards may be used in this regard.

xiv. Initiating fast track and time bound processes for resolving disputes on CPRs: CPRs throughout the country are highly contested for innumerable reasons, denying access to its users for common purpose. Thus, it is imperative that disputes over CPRs should be resolved on priority and the central government should initiate fast track and time bound processes for resolving disputes over CPRs.

xv. Building public awareness: Building greater public awareness is the need of the hour. More importantly, people's perspective on CPRs should be thoroughly understood and taken into consideration while designing public interventions. In this way, the institutional support, especially from the community should be strengthened and garnered towards better CPR management.

## **X Tenancy**

The idealistic policy of land to the tiller, implying complete ban on tenancy and sub-tenancy has never been realised. Those states like West Bengal and Kerala who allowed tenancy but provided for statutory rights of the tenants have succeeded much better in a smooth and pro-poor agrarian reform. Lessons must be learnt from this experience. Land owners shall have the right to give their land on lease or on share cropping basis to the tenants. Following are the recommendations with regard to tenancy:

i. Restrictions on land leasing within ceiling limits should be removed to help improving poor people's access to land through lease market and also for improved utilization of available land, labour and capital. However, there should be legal safeguards in the lease contracts that would protect the small and marginal farmers, and a clear recording of all leases, including share cropping.

ii. Encouragement to the women for group leasing, as far as possible.

iii. The clause of adverse possession in some tenancy laws should be removed because it acts as a dis-incentive to the landholder to lease out land. Further, this would improve rural poor's accessibility to land through leasing, discourage land being kept fallow and increase much needed occupational mobility of the rural people.

iv. There should be automatic and suo-motu resumption of land on the expiry of the lease period. The rent should operate as per the lease market. The State should not fix the lease rent. The market rent as agreed upon by the lesser and the lessee should prevail.

v. All tenants and sub-tenants including share croppers/ under-raiyats should be recognized by law and assisted with institutional support/finance and rural development schemes to overcome poverty and indebtedness.

## **XI. Land Acquisition**

i. A new Land Acquisition law titled the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill 2012 has been introduced in Parliament to replace the existing Land Acquisition Act 1894. Transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with least disturbance to the owners of the land and other affected families should be followed. The affected families whose land has been acquired and also to the families whose livelihoods are affected by land acquisition must get just & fair compensation.

ii. The proposed land acquisition law defines the public purpose so as to ensure the prevention of arbitrary acquisition of land. Social impact assessment and establishment of public purpose has been made mandatory through participatory processes. The affected families have been guaranteed certain rights for rehabilitation and resettlement. Safeguards for protecting food security and

limitations/prohibitions on acquisition of land in scheduled areas without the consent of the gram sabhas has been ensured. Scheduled Castes and Scheduled Tribes are proposed to be given a special dispensation with regard to compensation, resettlement and rehabilitation.

iii. Banning excess land being acquired for public purpose: Developers who acquire land under Land Acquisition Act, 1894 should be prevented from acquiring more land than required. The proposed Bill puts in safeguards to ensure that land in excess of that which is absolutely necessary is not acquired. Urgency provisions have been restricted only to natural disasters and war. The compensation for the acquired lands is proposed to be four times the prevailing market rates in rural areas and two times the prevailing market rates in urban areas. Land is proposed to be restored to the owners if it is not used for the purpose acquired within a specified time period. Substantial amounts of lands have been acquired for industrial and non-agricultural purposes. However, a large part of such lands have not been utilized till date. So, the new law proposed that further land should not be acquired till such lands are utilized. Multi-cropped irrigated land should be acquired only as a last resort.

## **XII. Land Bank**

i. Land Banks and its various models, which help in making available land to the Scheduled Castes/Scheduled Tribes (SCs/STs), may be encouraged. The Land Bank may operate the market route to acquisition of land as has been in the case of the IPK in Andhra Pradesh, the lands being inalienable. The Land Bank model of Andhra Pradesh may be studied by the by the States and adopted as per their specific conditions.

ii. A Land Bank comprising the SHGs of landless workers may be constituted on pilot project basis and if found appropriate can be extended to the rest of the country.

iii. The right to use in respect of the wasteland and other cultivable village lands will vest in the Land Bank. However, village common lands should be used for the common good of the village and may not be alienated.

iv. All unclaimed lands/abandoned holdings should also vest in the Land Bank.

v. The Land Bank should be authorized to lease in land and get it cultivated by their members.

vi. The Land Bank will have first right of the purchase in respect of the land being sold in the village.

vii. The Land Bank can use SGSY resources to purchase land or can get the same purchased in name of its members.

viii. All transactions should be made preferably in the name of women members.

ix. The Land Bank can lease in land from the absentee landlords or those not desirous of cultivating land.

x. The States may bring in legislation for operationalization of the Land Bank.

### **XIII. Resolving land problems including litigations**

i. It is estimated that thousands of land disputes are pending in Revenue and Civil Courts at various levels. Existing land laws in all the states provide for various forums and procedures for adjudication of land disputes. Absence of a common adjudicatory body and a uniform procedure is leading to complexity and delay in settlement of disputes and thus causing hardships to people. Case load in Civil Courts and High Courts is increasing on account of cases relating to land, which should otherwise have been resolved by Revenue Authorities.

ii. The following measures are suggested for effective and speedy resolution of land disputes:

1) State Governments should enlist all the pending land disputes/cases in various revenue offices and civil courts at all levels. An analysis of the pending disputes/cases should be done to understand the nature of land problems, reasons for pendency and the measures required for resolving them in a time-bound manner.

2) State Governments should consider enacting a special law, such as ‘The Bihar Land Disputes Resolution Act, 2009’ to deal with land disputes; and to provide for a uniform and common forum, procedure and mechanisms which would help in effective and speedy resolution of land disputes. This law should have the following features:

a) Should provide a common Authority at every Sub-District level for resolving all land disputes which may be arising under different land laws in the state.

b) No other Authority, forum, or court should have jurisdiction on the matters on which the Authority under this law has the jurisdiction, except the writ jurisdiction of High Court and Supreme Court.

c) There shall be only one appeal filed on the decisions given by the Authority constituted under the law.

d) There shall be uniform and simple procedure to resolve all types of land disputes.

e) This law should have overriding effect on all other existing land laws in respect of forum and procedure to resolve land disputes.

f) The Authority created under this law should have the same powers that of the civil court.

iii. State Government may also consider enacting a law to constitute a Tribunal at state level to deal with all appeals under various land laws and to speedily dispose all land cases. This law may have the following features:

a) The Tribunal is the final authority to settle all land disputes.

- b) The Tribunal has power to prescribe its own procedure.
  - c) The Tribunal has same powers as that of the civil court.
  - d) There is procedure to transfer pending cases from High Court and Government to the tribunal.
- iv. State Governments should prepare a proposal for establishing such tribunal and send it to the Ministry of Rural Development, Government of India for necessary support. The proposal should include the establishment and recurring cost for the Tribunal. After receiving such proposal from states, Ministry of Rural Development, Government of India will consider supporting the Tribunals on cost sharing basis with the states.
- v. States shall establish and operate Land Tribunals in pursuance of Article 323 B/Entry 11 A of the Seventh Schedule of the Constitution of India with provisions for functioning akin to fast track courts. Such Tribunals shall adjudicate upon, amongst others, the following cases on priority:
- a) Cases relating to restoration of alienated tribal land;
  - b) Cases relating to forcible dispossession of land with provisions for penalty and payment of compensation for the period of dispossession, and
  - c) Cases pertaining to women who have been dispossessed and alienated.
- vi. Land Tribunal shall not be bound by the procedure of the Evidence Act and the Code of Civil Procedure. In determination of claims before the Land Tribunal, the Tribunal shall follow summary procedure and simplified civil procedure in accordance with the principles of natural justice. There are large numbers of areas that was declared surplus but are yet to be taken possession by the State Governments. Such areas are mainly pending in litigation in various courts. The State Governments should take immediate steps for early redemption of the lands which are in litigation in the courts, by making, wherever necessary suitable changes in the law itself. The cases that shall have to be continued to be litigated need to be fast tracked by putting them before the Land Tribunal constituted in terms of the policy laid out above. Publically supported legal aid should be given on a priority basis to marginalized women.
- vii. In spite of the progressive and pro-poor land laws, millions of rural poor still do not have access or have insecure access to land as they lack one or more essential ingredients of legally secure land right - possession of land, title document and entry in the land records. The poor are not able to secure the rights over land due to lack of legal awareness; absence of legal assistance; inadequate time is given to dispute resolution by the Revenue Officials; training given to the revenue officials is inadequate; there is an excessive reliance on documents and oral evidence administered under oath while there is little credence given to knowing the facts by making a field visit; multiple land adjudicating forums and complexity of procedures; and lack of access to land records.
- viii. The following measures are suggested for effective and speedy resolution of land disputes/problems and for providing free legal assistance to the poor:

- a. It has been the experience that the poor are not able to take advantage of the pro-poor land legislations and programmes due to lack of awareness, access to information and lack of facilitation support to present their claims before the appropriate authorities. They require a sensitive support mechanism to help them in accessing information, knowledge, records, justice etc. For providing this support to the poor, a Land Rights and Legal Assistance Centre should be established at every Block/Sub-district headquarter under the control of DRDAs. The experience of Andhra Pradesh in designing and implementing the Land Access Programme offers promising strategies in helping the poor to get their land problems resolved. These Centres should consist of Paralegals, Community Surveyors and Lawyers. In each Block/Sub-district, 3-5 rural youth/women from the community should be identified, trained in land and legal matters and positioned as paralegals and similarly 3-5 youth/women from the community should be identified, trained in land survey and positioned as Community Surveyors. A Coordinator with law background should be appointed in each Centre who will provide both functional and technical support to the Paralegals and Community Surveyors. A panel of lawyers should be constituted in each Centre to fight the land cases pertaining to the poor in both Revenue and Civil Courts. The support of Law Schools/Colleges should be taken to train the Paralegals and also to utilise the services of law students in providing legal assistance to the poor. Similarly the training of Community Surveyors should be done in partnership with Govt. Survey Department. In addition, services of a revenue officer, either serving or retired, can be made available to each Centre to have a better interface and coordination with the Revenue Department.
- b. State Governments should prepare a plan for establishing the Land Rights and Legal Assistance Centers and send it to Ministry of Rural Development, Government of India. Ministry of Rural Development, Government of India will sanction the necessary funds for establishing the Centers through National Rural Livelihoods Mission.
- c. After establishing the Land Rights and Legal Assistance Centres, inventory of all lands should be done in all villages to identify land problems of the poor. Services of the local village youth/SHG women may be utilised as Community Resource Persons, after providing basic training on the land records and other important provisions related to lands to enable them to map the land problems in all the villages. During the inventory, there shall be special focus on the lands belonging to Scheduled Castes and Scheduled Tribes. The digitized inventory record will throw light on how every parcel of land is recorded in important land records and who is in actual enjoyment.
- d. Based on the inventory of the land problems identified by the Community Resource Persons, Paralegals should conduct local enquiry and collect necessary information required for filing petitions/cases before the appropriate authorities. Paralegals should also assist the poor in filling petitions/cases in Revenue and Civil courts. Wherever intervention of Lawyers is required, the Lawyers Panel should take up the cases. Wherever survey related issues are reported, services of the community surveyors should be utilised.
- e. State Governments should design and take up an intensive, continuous and comprehensive training and capacity building programme to all the revenue officers at various levels to reinforce their pro-poor perspective and to expand

their understanding of the pro-poor land laws, Government Orders and Judicial Decisions. Periodical refresher courses shall be arranged to boost their morale and to keep up their enthusiasm levels high.

- f. All the land cases, identified and filed before revenue authorities by the Paralegals, should be settled on a priority basis and in a time bound manner preferably by holding the courts/hearings in the villages.
- g. In all the cases which are identified by the Paralegals and filled in the Civil Courts, State Government should take measures for speedy disposal.
- h. In addition to the Land Rights Centres, free legal services available under National Legal Services Authorities Act through Legal Services Authorities constituted at various levels should be strengthened and made use of for proving free legal assistance to the poor.
- i. State Governments should take steps to spread land legal literacy among the poor, especially among Scheduled Castes, Scheduled Tribes and other marginalised with a special focus on women.
- j. State Governments should constitute Convergence Committees at State, District and Sub-district/Taluqua level to provide necessary support and guidance to the Land Rights and Legal Assistance Centres. The Committee should consist of officers from Revenue, Rural Development, Panchayat Raj, Forests, Tribal Welfare, Social Welfare and representatives from civil society.

#### **XIV. Modernization of Land Records**

i. Majority of the problems encountered by the people in exercising control over land arise from the complexity of the land record system and its overwhelming control by the 'lower' level bureaucracy. To counter this problem all attempts shall be made to make land records accessible and understood by the common man living in the villages of the country. To this end people shall be made aware of the process of making land records as well as use and interpretation of the land records.

ii. It is unfortunate that the system of land administration and management, despite having a long history in India since the time of Todar Mal, has remained neglected in most parts of the country particularly after development agenda became the major focus of the government and administration in the recent few decades. The regular survey and settlement operations started after the independence were abandoned under a mistaken notion that this whole exercise aimed at periodical revision of land revenue had no place in a democratic polity, particularly because there were other major sources of revenue. It was little realised that proper and scientifically updated land records are not only critical for agricultural development, just and smooth agrarian relations and rural social harmony but also are the backbone of developmental effort.

iii. Manual updating and physical verification of land records before its computerisation is a must. There should be a National Authority for Computerisation of Land Records (NACLRL) at the Government of India level for this purpose to fulfil the target. At the State level it is felt that there should be a dedicated institution in the form of the State Authority for Computerisation of Land Records (SACLRL) in similar mode as the NACLRL to deal with the computerisation of land records. The state authority should undertake the programme in a time bound manner. The state authority should be a separate body headed by Secretary level officer which can be

merged with its parent department after the completing the task of computerization. In most States the work is being handled by the Directorate of Land Records and Surveys who are not able to cope up with the task on account of their multiple engagements. Representatives of different Departments/agencies whose data is being included into the data base should also be permanently represented. A part of the recommendation is already under implementation as States/UTs have already been advised to set up technical groups on the lines of CTAG. The suggestion regarding creation of State/UT-level authorities may be left to the States/UTs. There is need for building a network of institutions for appraisal of the programme of computerisation of land records. The network should be headed by some lead training- cum-research institution so that there are alternate streams of information flow. The lead institution will involve the training institutions in the State like the SIRDS, the ATIs, the Agricultural Universities, reputed institutions of the State Government, reputed Civil Society Based Organisations for evolution of a core national format and a State-wise formats capturing the environment of the State. The findings of these appraisal/evaluation studies should be placed on the National Portal.

### ***GIS (Geographic Information System)***

A robust geographic information system (GIS) needs to be developed to help in good governance.

- i. Survey Database is proposed to store information related to the geodetic network, current survey data, and historical revenue cadastral records of all surveys and the repository for detail from the original revenue source records of the land surveys that underpin the land parcel data or the cadastral framework, and acts as a reference system for accurate coordinates, and forms the base for the Digital Cadastral Database;
- ii. Cadastral Database is proposed to provide an up-to-date continuous cadastral map base to support cadastral mapping and the LIS functions, and stores the current cadastral framework, thematic overlays and topographical data in a seamless form;
- iii. Legal/Fiscal Database is proposed to facilitate transactions for updation, mutation, sales etc. and provision of revenue approved maps and title possessions.
- iv. The Related Data Base refers to the data in the related fields like health, water, agriculture, ground water, soil data, irrigation etc. Such data should be integrated to the other data on the GIS.
- v. A National Portal with a Web GIS is recommended where each State, District, Block and Village should have own respective portal for storage of land records data. The accessibility of data will be based on public domain and authentication.
- vi. A dedicated communication network preferably a two-way audio-video should be operationalised for data sharing, data accessing and will be interactive in nature. The farmers will be using the networks of various Departments for raising their queries like agriculture e-learning process.

- vii. The GIS portal should integrate all information of land management from Gram Panchayats in one common data server and should be compatible with other networks.

## **XV. Empowerment of Gram Sabhas in Scheduled Areas**

- i. Gram Sabhas in Scheduled Areas shall be vested with right to manage all types of land within its jurisdiction. This includes all types of 'government' and 'forest' lands as well. The management right of the Gram Sabha shall include the right to annual land settlement exercise or time period as determined by the respective state governments. The Gram Sabha shall also have the right to develop the lands within its jurisdiction.

- ii. The right to make entries in the 'record of rights' shall vest in the Gram Sabha. All such proposed entries shall be placed before the Gram Sabha by the patwari and shall be included in the 'record of rights' after approval from the Gram Sabha. All Panchayats shall have a standing committee for land matters. Appropriate amendments shall be made in the concerned Acts and laws to enable the formation and functioning of such 'standing committees'. The Government of India and all the State Governments shall provide support for building the capacities of panchayats on priority basis. These processes shall include civil society organisations. The Gram Sabha should be recognized as the Competent Authority for all matters pertaining to transfer of tribal land, for restoration of alienated tribal lands, and for maintaining the land records. The Land Revenue Codes and other relevant laws should be suitably amended. Full rights of management to vest in the Gram Sabha of the Panchayat which will include the village Wasteland, Common Lands, land under public utilities, Government Land, community lands, dedicated lands etc. The management rights will include settlement of land on annual basis or for such terms as be deemed desirable by the State Government, development of such lands or such other measures that the State Government may deem it fit.

- iii. Entries to the 'Record of Rights' shall be made by the Patwari or the Village Officer only on a specific resolution of the Gram Sabha. Records shall be retained at the office of Gram Panchayat and made available on specified days. The right of Settlement of land should rest with the Gram Sabha of the Panchayat. There should be a Standing Committee of the Gram Panchayat dealing with land issues including management of waste land, common lands, etc. The Panchayat Acts of the States may be suitably amended to legally provide for such a Standing Committee of the Gram Panchayat. The State/Central Government should provide the Panchayats assistance to enhance their capacities.

- iv. Capabilities have to be created amongst members of the Panchayat for understanding of the revenue records, surveying, creation of the record of rights and their maintenance. A National Plan may be prepared as a part of the National Capability Building Framework, already existing for the Panchayats. The Department of Land Resources may prepare training modules on land management which can be integrated with the National Capability Building Framework (NCBF) prepared by Ministry of Panchayati Raj. Premier training institutions like the NIRD, LBSNAA and State Academy of Administration should create a network of training institution for the entire country. This recommendation is already under implementation through NLRMP and a national level institute to be called NILAM is also proposed to be set up.

## **XVI. Land Administration**

### ***a. Land Management***

- i. Better land administration: There is an urgent need to simplify the revenue administration. Other models of revenue administration as well as land governance, registration and acquisition systems should be looked upon. Most of the revenue system in various States are archaic and date back to the British systems. There is also need of removal of intermediaries.
- ii. The States have to realize that the objectives of Land Management Systems have changed fundamentally and it has to be prepared for basic changes in the manner in which our lands and records are being managed, to suit the requirements of the present day demands.
- iii. For addressing problems relating to land, single windows approach to be provided by the administration.
- iv. Each State has to put in place a mechanism to keep their land records updated and real-time.
- v. Land revenue administration should be placed under the plan head and should be subject to planning under the guidance of the Planning Commission.
- vi. The Central Government should come out with a National Land Use Policy and the respective State Governments should declare their own land policies. This Policy Structure should have a long term perspective. The D/o Land Resources may frame a National Land Use Policy. It may also help the States/UTs in preparing their respective Land Use Policies.
- vii. If the measures for revitalised Land Management are to make any headway the State Governments have to decide on the allocation of resources as a matter of State's commitment to this sector and not treat this as part of the Central Government allocations as supplements to the ways-and-means position of the State Governments.
- viii. The National Land Council should be reorganised on the lines of the National Development Council so as to be make it a fully federal structure.
- ix. Land Relations and Agrarian Movements may be included as an item of review in the National Development Council and the Prime Minister's Annual Meeting with the Chief Ministers and land relations need to be seen as a part of larger development perspective but not law and order prospective. The D/o Land Resources may take appropriate action in this regard.

- x. The Settlement of Rent should be left to the village community to decide at the Panchayat level and to be appropriated for their own purpose.
- xi. The Khatian should be approved by the village community through the Gram Sabha before its final publication.
- xii. All court and revenue work should necessarily be carried out in the language of the State.
- xiii. A copy of the Record of Rights (RoRs) should be available with the Panchayat for inspection till computerization is achieved.
- xiv. All orders in respect of land affecting the rights of the people should be posted on the net.
- xv. In a village based judicial system all orders should be open for display.
- xvi. Vernacular used should be in simple terminology.
- xvii. The emphasis should be more on dispute resolution than adjudication.

### ***b. Role of the Panchayats in Land Administration***

- i. Full rights of land management to vest in the Gram Sabha of the Panchayat which will include the village Wasteland, Common Lands, land under public utilities, Government Land, community lands, dedicated lands etc. However, the States/UTs should ensure that Gram Sabhas should not alienate such lands.
- ii. Mutations in undisputed cases should be done by the Gram Sabha.
- iii. Khesra Girdawari/ Adangal may be prepared by the revenue officials but they should be read out in the Gram Sabha.
- iv. No settlement of Gram Sabha land should be made on a permanent basis. The settler and his descendants should have the right to use and inheritance.
- v. The Gram Sabha should have the power to evict all encroachers from public land.
- vi. The State/Central Government should provide the Panchayats assistance to enhance their capacities.
- vii. A cadre of junior officers may work under the Panchayats subject to their full administrative control.

- viii. M/o Panchayati Raj may take appropriate action for early enactment of the Nyaya Panchayats Bill.
- ix. The Access to the Land Movement of Andhra Pradesh is good and it is recommended for adoption by other States with such modifications as may be deemed proper to suit their local environment.

***c. Conversion of agriculture land for non-agricultural purposes-***

i. Reclamation and development of unutilized and used land: It has been seen that in many instances unutilized land acquired for a public purpose is difficult to reclaim. There should be a speedy process to reclaim and take possession of the unutilized land. Moreover, used land, especially in case of coal and other mines should be reclaimed instead of acquiring agriculture land for public purpose. M/o Coal should enforce its guidelines relating to mine closure on coal mining organizations and remain vigilant in this aspect. Where land is unutilised following acquisition for a period of five years or more the State shall have the option of either placing it in the State's land bank or return it to the original owner.

ii. Barren and uncultivable land should be used for non-agricultural uses: According to official figures, there is roughly 177 Lakh hectares of barren and uncultivable land lying unused. So, barren and uncultivable land should be acquired for industry and public purpose as far as possible. Although this is clearly mentioned in most project proposals, its execution has been a problem. To ensure that barren and uncultivable land is acquired proper monitoring should be adopted.

## **XVII. Training and Capacity Building**

The task of building the capacities of the functionaries who are mandated with the responsibility of land administration and management is very important. It becomes very critical for the State Governments that their land staff are well-equipped to handle all the above tasks of land records updation, exploring various possibilities of bringing in more land in access to the poor, preparing and maintaining inventories of different categories of lands, protection and restoration of poor peoples' lands, strengthening of gram Sabhas and all the above ensuring community participation to bring in more transparency and accountability. Hence, following are the recommendations with regard to training and capacity building:

### ***a. Training inputs***

- i. The revenue component will be a part of all training components to be administered to the Panchayat functionaries and to the elected Panchayat Representatives.

ii. The training will also include basics in computer operation, maintenance of records and data management

***b. Training Institutions-***

i. Institute at the National level, NILAM should create a network of training institutions for the entire country.

ii. The SIRDs/ the Administrative Training Institutes should be developed into the apex training Institutions for revenue related training at the State level.

iii. At the district level the ETCs or some other training institutions should be inducted as the lead training institution.

***c. Training Infrastructure-***

i. The Training Infrastructure can be availed from multiple sources – the existing infrastructure like the computerization programmes of the different Ministries, the DRDAs, the ETCs, the other lead training institutions etc.

ii. The e-PRI can be pushed at a fast space and the revenue training will form a part of the e-PRI training. M/o Panchayati Raj may take appropriate action.

iii. Such institutions like the NIC and others can take up the task of training the members of the Panchayats. CSCs can be utilized for training purposes.

iv. The existing survey training schools could become nodal training institutions for training the Panchayat and other functionaries

***d. Content of Training -***

i. A basic framework of Training should be designed at the national level. The States should have their own training framework.

ii. The training content should be in self-taught mode and very simple form.

iii. The training curriculum should include basic knowledge of computer application, relevant revenue laws, data management, principles of taxation, accounting, Panchayat related laws, delivery system in the Panchayats, etc.

iv. The apex institution must make an appraisal of the training content and the quality of training at the field level.

v. The State Governments are to ensure that there should be a minimum tenure for the trained personnel for utilizing their expertise.

### **XVIII. State Land Rights Commission**

All the State Governments shall within a specified time frame (possibly six months) set up State Land Rights Commission that shall review the progress made by the State Governments on realisation of land rights on an annual basis and furnish an Annual Report thereon before the Legislative Assembly of the State.

The State Land Rights Commission shall also advise the appropriate State Governments on all land rights, land reforms and associated policy issues emerging from the State to the appropriate State Government. The commission shall be constituted of a good proportion of women (at least 50%), and with representatives from the civil society. With regards to monitoring, state level civil society, a Land Watch Committee should be set up.

### **XIX. Implementation of this Policy**

***It would be worthwhile to create a Land Reforms Unit within every State Academy of Administration.***

***The Central Government shall set up a mechanism under the Department of Land Resources to monitor the implementation of this policy.***

***This Department will present a report before a bi-annual meeting of the State Revenue Ministers specially held to review progress on the Land Reforms Policy***

***It should be ensured that the implementation of this policy on issues related to the Forest Rights Act 2006 should be in consonance with the architecture given under the Forest Rights Act 2006***