

# Policy Brief

Legal provisions and limitations to land rights and land management

## Main Policy Recommendations to the Government of Nepal

- Landless Dalit and *Sukumbaasi* should be provided land for housing and agriculture based on livelihood requirements (of family) and land availability ensuring full ownership according to 18<sup>th</sup> Amendment to the Land Related Regulations, 1964 (Rules 41b and 41c)
- Investigation of land beyond ceiling should be time bound and concluded within 12 months. Appropriated land by implementing land ceiling should be distributed to landless by the Land Issues Resolving Commission.
- Legal provision should be enacted to provide land on lease, also considering the changes that may surface in land tenure arrangement after COVID-19, for farmer who want to do agriculture.
- The issue of Tenancy land distribution that has been contested 'for long time' should be concluded by providing additional human resource and budget to district land reform and land revenue offices.
- Institutions which benefitted from the Clause 12 of Land Act 1964 should be disallowed to sell or exchange land for any reason. If such institutions dissolve or go into liquidation; provision should be made for government to buy that land at the price not exceeding the initial purchase price or just seize that land.
- Except within Kathmandu Valley, Metropolitan Cities, Sub-metropolitan cities and urban areas of Municipalities, land for housing should be provided to those who do not do agriculture while providing land for both housing and agriculture to those who do not do agriculture.
- Fees collected from informal settlers should be fixed irrespective of the size, rather than classifying informal settlers under various categories.
- Residents of the land specified in the Clause 52B (4) and of government and public land without land certificates should be provided prior information and reasons on why they are being displaced.
- Informal settlers residing in the lands specified in the Clause 52B (4) occupying land outside their current district of residence should be provided homestead land or housing facilities for them on instalment basis.

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### Acknowledgement

This policy brief is developed based on the in-depth review of 8<sup>th</sup> Amendment to the Lands Act, 1964 and 18<sup>th</sup> Amendment to the Land Related Rules, 1964, with particular focus on the provisions related to land rights and management, to inform the government and related stakeholders about the progressive provisions, regressive provisions and the gaps. The study is conducted by Community Self-reliance Centre (CSRC) under International Land Coalition (ILC) supported National Engagement Strategy (NES) for people centered land governance initiative in Nepal.

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## Introduction

Important policy changes materialized in Nepal's land governance sector after 1964. Provisions supportive to sustainable land use have surfaced at international level too. In this policy brief, we describe provisions related to sustainable land use and highlight legal shortcomings, with particular reference to the Land Act 1964 (8th Amendment) and Land related Regulations 1964 (18th Amendment) to present some policy recommendations.

An emphasis is put on respectively the 8th Amendment, and 18th amendments since they embody the challenges to effectively secure tenure for landless including Dalits and Informal settlers.

## What is at stake to address PCLG?<sup>1</sup>

### 1. Land ceiling: an overview of the Legal Framework

In 1964 and, then in 2001, the government introduced and subsequently revised the land ceiling law. Very tiny portion of land was distributed from the land appropriated implementing the ceiling introduced in 1964. As per the studies estimated more than 600,000 hectares of land would be acquired from land reform to make redistribution of land to landless and tenant farmers.

The land ceilings is yet to be implemented, in light with Nepal's

demographic structure, and socio-economic challenges pose by Covid-19. The Land Act 1964 was amended in September 2018 for the 7th time but could not adequately address the land tenure security needs of the tenant, landless and informal settlers in Nepal that has continued the land inequality that has prompted government for 8th amendment.

**Lands Act 1964 Eighth Amendment** added sub-clause (7) with specific provision enabling land office to withhold land beyond the legal limit until concluding the investigation/examination within a definite timeframe

If this provision of withholding was properly implemented while revising the land ceiling, huge amount of it is estimated that 600,000 ha of land could have identified, and re-distributed. Meanwhile, it is claimed that only 3 percent of all landholdings exceeding ceiling levels and available for land redistribution was identified, of which less than 1.5 percent was legally appropriated

and only 1 percent was legally distributed.

Such land remained on withhold ultimately. The process of land investigation and appropriation should not come to a halt at this point. The excess land beyond legal limits should be distributed to landless by setting the definite time-frame. The detail of the land ceiling proposed by the government of Nepal in different time is presented in the **table 1**.

8th Amendment has rejected the provision of legal limits over tenancy land. With this new provision, there is no any legal obstacle for tenancy land separation even if the investigation related to land ceiling is not concluded [sub-clause (8)].

The land rights of the struggling tenants should be well recognized and formalized through the land title over their share of tenanted land by the state as early as possible, utilizing the changed legal context, which has made tenants (operating over the land beyond ceiling) eligible to take their right

**Table 1: Land ceiling enforced in Nepal**

Geographical Location	Land Agricultural Purpose		Land for Housing purpose	
	16/11/1964 – 15/08/2001	16/08/2001 to till now	16/11/1964 – 15/08/2001	16/08/2001 to till now
Entire Tarai Area including inner Tarai	25 Bigha	10 Bigha	3 Bigha	1 Bigha
Kathmandu Valley	50 Ropani	25 Ropani	8 Ropani	5 Ropani
Entire Hilly Reason except Kathmandu	80 Ropani	70 Ropani	16 Ropani	5 Ropani

\* 1 bigha = 0.68 Hectare

\*\* 1 Ropani = 0.05 Hectare

1 Legal bases related to land management and land use provisioned by Land Act 1964 (8th Amendment) and Land Related Regulations 2020 (18th Amendment) passed and proposed before Coronavirus Pandemic should be revised to align with the after Corona situation in order to increase their effectiveness.

share as per the Act. With the honest implementation of this provision, existing contestation over tenancy land separation is expected to be concluded within a year or so if implemented properly.

## 2. Land Ceiling Exemption

The 8<sup>th</sup> amendment to the Land Act 1964 has exempted land ceiling for legal entities (companies and institutions) under various conditions. In case institution or company receiving exemption facility dissolved or went on mandatory liquidation, there is no obstacle to sell that land in order to change the liability as per the provision on land ceiling exemption under clause 12 C (1). Specific terms and conditions [12C(2)] apply in favor of the government in the case such legal entities ought to relocate or exchange the land.

**Prevent prospective loss to the state through the misuse of land resource:** Against the provision, we suggest that 'this provision should be implemented without its distortion to prevent the misuse of land resource, and avoid the possible loss for the state. In this way, the role of the 'monitoring and inspection committee' provisioned in the Clause 15 (A2) to ensure the sustainable land use will also be effective.

## 3. Cross off the Tenants Record

**Specify the criterion:** What is the basis that shows the tenant has stopped tilling the land voluntarily, while investigating to proceed with concluding the tenancy issue through separating Tenancy land as per the Section 15 (A1) [15 (A2)?

This can be confirmed through spot verification with the neighbors about whether or not the tenant has stopped tilling the land voluntarily and cross off the tenant record accordingly.

Except in case both tenant and land owner could not agree and one of them filed an application, the officer-in-charge may examine the necessary evidence and distribute land to cross off the tenant record according to the Clause 26 D (1).

In the sub-rule 3A under the Rule 24G in Land Rules (18<sup>th</sup> Amendment) 2020, there is a provision for issuing joint land certificate in the name of both tenant and landowner in case none of them applied for tenancy land separation. This provision seems to solve the problem technically, however the complexities relating land use and ownership may remain unresolved. So, it is not necessary for the government to provide guardianship to such indifferent people (both tenant and land owner) not claiming their land rights within the provided timeframe. Government should

be able to seize such land that can be later provided to the actual landless families.

Similarly, there is a provision of joint land certificate also for tenant and land owner in case land allotment is not possible. This provision is not practical, though it is provisioned with good faith. It may bring some significant practical difficulties related to the better management and utilization of such lands, which may result in a serious conflict.

To meet these interconnected challenges, there should be provision for tenant or land owner to take the price of the share and register entire land in the name of either of them.

## 4. Land to landless Dalits and landless squatters

**What the law says? What we suggest as way forward? Land for housing and agriculture for families engaged in agriculture and for others homestead land only:** Clause 52B (1) of the Act is a historical policy provision as it has made it possible, for the first time, to provide land to landless Dalits and landless squatters for one time. To implement this provision, the size of the land to be distributed is mentioned in the Rule 41B. (1) of the Land Rules (18<sup>th</sup> amendment) 2020. Provision of the Rule 41.B (1)<sup>2</sup> is not clear enough to understand whether

2 A) : Land for housing up to 130 meter squares (4.088 Ana) in Kathmandu Valley, Metropolitan City, Sub-Metropolitan City, and in Urban area of Municipality, land for agricultural purpose up to 2000 meter square (5.906 kattha) OR for housing up to 340 meter square (1.004 kattha) will be provided in the Tarai and Inner Tarai region except in the areas of Kathmandu Valley, Metropolitan city, Sub-metropolitan city and city areas of Municipalities. And in Mountain and Hilly region – for agriculture up to 3000 meter square (5.898 ropani) land will be provided.

the land is provided either for housing or for agricultural purpose or for both as it says 'land will be provided for either housing or agricultural purpose for one time'. This sort of legal unclarity may create a lot of confusion during its implementation in the ground hampering the secured land tenure for landless people. Those who engage in agriculture should be provided with both homestead and agricultural land, while others, who don't engage should be provided homestead land. The legal provision should be implemented immediately in-line with this spirit.

**Local level will manage excess land:** Clause 52B.2. has a provision about the excess land used by the landless *sukumbasi* that the government shall either distribute it among other landless or utilize it for other purpose. In case there is no need to distribute such land, Nepal government in coordination with the Commission and the Ministry can give the local government the responsibility to manage such land. The task of land distribution will become easy if government coordinates with provincial governments and local level and further clarifies their roles considering the post-COVID-19 scenario.

**Forward the contested decisions of previous commissions or task forces related to land distribution**

**and protection immediately:** *Land Issues Resolving Commission (LIRC)*, is already formed as provisioned in the Clause 52B (6) mainly to provide land. It has rights according to Clause 52B (8) to examine and solve the problems related to the decisions of previous commissions committee and working group about ownership of the distributed land, land records kept and maps created. The decision of the government of Nepal, to form this commission, prioritizing the land issues while the world was going through the COVID-19 crisis, should be heartily welcomed. The commission must proceed forward putting the welfare of the landless and squatter communities at the center.

The process of verifying the land records, maps and ownership of the land distributed by the Various commissions or working groups formed by the government of Nepal in the past, as well as releasing (Rokka-fukuwaa) the withhold land as per their recommendation should not be delayed.

**Address the employment and livelihood aspects while managing the settlement:** Rule 41M has a provision for housing, in which the question of employment and livelihood has not been included at all while (Sub clause 1) making provision for collective or unitary housing units for landless Dalits

and Squatters and (Sub clause 2) providing land to develop integrated settlements or managing the settlements.

## 5. Managing Squatters or Informal settlers

### Inter-Ministerial Coordination:

Clause 52C has provision for managing the Squatter and informal settlers. No matter, whether it is government or forest land indicated in the land records, informal settlers that are residing there for at least 10 years<sup>3</sup> will be provided the fixed size<sup>3</sup> of land at their residence or in other government land that government finds appropriate for settlement purpose. Coordination among MOLMCPA, Ministry of Forest and Environment and Ministry of Urban Development is necessary while land is being provided.

**Rehabilitate in safer place with proper alternatives:** According to Rule 41C [2(c)], informal settlers operating on the land specified under the clause 52B (4)<sup>4</sup> shall not be provided the same land, or the compensation or the land elsewhere for that land. If this provision is implemented as it is, many of the people will face difficulty because large number of them are estimated to be residing in the land specified in the clause 52B (4c&4d)<sup>5</sup>. After confirming whether informal settlers don't

3 **Rule 41C (1A)** In Kathmandu Valley, Metropolitan City, Sub-metropolitan city and City areas of municipality land up to 130 meter (4.088 Aana) square and in other areas up to 1000 Meter Square (2.953 Katta) for housing will and for Agricultural purpose ing up to 10,000 Meter Square (29.531 Kattha) land will be provided.

4 Public land, Land along the river, stream or canal, settlement in the land in risk area, national parks or land with in the conservation area, forest land covered with trees, or land in the right-of-way.

5 Land identified for the usage of Government of Nepal, Provincial Government and Local level.



have land elsewhere except in places specified in the clause 52B (4) or they have nominal land elsewhere, Commission should identify alternative options to settle them in secure places. This would be injustice to them otherwise.

#### **Clear measures for Squatters:**

Provision related to classification of informal settlers (Squatters) for management purpose in Rule 41E could create a lot of procedural and technical hurdles. It is crystal clear that the real beneficiaries were deprived of benefit as classification of ex-haliyas and ex-kamaiyas failed to be effectively maintained. Taking the lessons from the Haliya and Kamaiya rehabilitation exercise, it is good to proceed with some measures without classifying Squatters. The families meeting the set measures can get the facility. So it is necessary to be clear enough on who is informal settler and in what condition he gets the benefit as per the Act.

**Different fees for land specified by the rule and for land beyond that:** rather than the classification of the Squatters the fees for those keeping different size of land can be clearly mentioned in this rule. Government may acquire huge amount of land while managing the land under informal operation, which can be managed as the land beyond legal limits following the existing policy measures in coordination among land commission, Ministry of Land Management, Cooperatives and Poverty Alleviation and Related Local Government.

## **6. Cooperation**

**Sub-Rule 4 should be added after 3 in the Rule 41L-** (4) Provide prior information specifying reasons to displace them and ensure that proper alternative settlement is already in place in coordination with local governments and the Commission while displacing squatters as per the sub-rule (3) from the land specified under the Clause 52B (4) of the Act.

Rule 41G [1B(2E)] has clearly said that those cultivating and residing in the land in more than one districts or more than one local level not sharing the borders will be given land from one district or local level of their choice. But in reality there is huge number of informal settlers residing or cultivating land in more than one local level or district in almost all of the tarai districts. To resolve such issues, coordination among related local level and districts, where provincial government and Central government can facilitate the coordination process.

## **Positive provisions**

**Land Issues Resolving Commission established:** LIRC is formed as per the Clause 52B (6) which is mandated to provide land to landless and informal settlers and to solve the problems related to the ownership of the land distributed, maps created and land records maintained by previously formed commissions, committees and working groups by the government as per the Rule 41T. This provision has resurrected the hope that

the complex problems such as the utilization of the government, public and unregistered land and associated ownership will be solved.

#### **Land rights of Landless recognized:**

Clause 52B (1) of the Act has a provision of providing land to landless (*dalit & sukumbasi*) for one time either at the place of their residence or in the other government lands considered appropriate by the government with in the specified limits. If the land being operated exceeds the legal limits, government will provide such excess land either to landless people or it can be used for other purpose by the government (sub-clause2).

#### **Land rights of Squatter recognized:**

As per the clauses 52C, government will provide land for one time if squatters are residing there for last 10 years even if it is recorded as public or forest land.

#### **Keep records at local, provincial and federal level:**

according to the Rule 41U records related to land distributed by the LIRC and landless dalit, landless Sukumbaasi and Squatters receiving land under Clause 52A, 52B and 52C should be properly kept at local level, provincial and Ministerial level. Local level and Province will keep such records from their areas while the ministry will keep the nationwide record. This provision will strengthen the national land data ecosystem.

### Coordination with Province

**Government & Local Level:** Rule 41N has provision for LIRC to coordinate with provincial and local governments to provide land to landless, to decide whether the land they residing on fall under the category mentioned in Clause 52B(4) and to monitor the overall process of data collection and land distribution at local level. This provision is expected to resolve the land problems considering the local specificities.

As per the Rule 41H landless dalit, landless *sukumbasi* and squatter should file an application in the related local government units within the application period for the purpose of the provision of Clauses 52A, 52B and 52C of the

Act and local governments should examine and verify their details and should provide it to the commission or the authority designated by the commission.

**Land Protection:** Land specified in the clause 52B (4) – land having religious, cultural and military importance; land that should be protected from the perspective of natural disaster, disaster management and environmental sustainability; public land, land within right of the way; land designated for the usage of the federal and provincial government; and other specified lands are prevented from being distributed which is very good provision from the perspective of the sustainable land use.

## Conclusion

There is no other alternative than increasing the access of marginalized communities to land in order to implement the principle of equality and justice, and realize Nepal's sustainable development goals. For agriculture based households, land should be given up to the level which the available labor within the family can best utilize. And those who do not do farming by themselves should only be given homestead land. This can be done in line with the Land Act (8th amendment) 1964. This step can prove that the possibility to realize people centered land reform in Nepal is still alive.

### Disclaimer

"The opinions expressed herein are those of the authors. They do not constitute official positions, strategies or opinions of ILC, its wider membership or donors."

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