

# Policy Brief

## Role of Local Government for Land Governance and Policy Making Process in Nepal

### Policy Recommendations

#### Recommendations for the Ministry of Land Management, Cooperatives and Poverty Alleviation (MoLMCPA), Government of Nepal

- Create conducive policy environment for the local levels to formulate local land laws. This can be done by implementing the related Constitutional provisions and sectoral laws available at central level.
- Ensure the participation from Local Levels in National Level land laws and policies formulation process. This may enable policy makers to incorporate the priorities also relevant to local level land governance into national policies.
- Government has been treating land rights of different groups differently. It has a significant policy implication at the local level in achieving land justice. MoLMCPA needs to facilitate Local Levels for full-fledged land ownership and ensure land tenure security as per the property right enshrined in the Constitution for landless and informal settlers including freed Kamaiya, Kamlari, Haliya, Harawacharawa - through land distribution.
- Government's plan to decentralize the land administration system, by establishing institutional set-up, seems to be very slow following the centralized system that is further complicating the land governance at provincial and local levels. Therefore, MoLMCPA needs to provide both financial assistance and technical support to local levels for local land surveys, data collection, updating land use maps and preparing land use plans with clearcut land use categories.
- Provide technical assistance to Provinces and Local Levels for categorization of land and classified use.

#### Recommendations for the Ministry of Land Management, Agriculture and Cooperatives, Provincial Governments

- Establish Provincial land information system, prepare up-to-date land data base through the ongoing re-mapping of land.
- Support Local Levels for necessary institutional mechanism and policy infrastructure required for the categorization of land including the Guthi Land for its proper management
- Coordinate with Federation and Local Levels for the management of freed Haliya, Kamaiya and Kamlari including the Harawacharawa
- Formulate the Provincial Lands Act and Land Policy as per the Constitutional provisions.

#### Recommendations for the Local Governments

- Formulate Local Level Land Act, land use plan and policy.
- Establish local level institutional mechanism – local land use councils and execution committee as immediately as possible.
- Build a local level land information database and utilize the updated data for policy formulation, development planning and implementation at local level, including in the rehabilitation process of the freed Haliya, Kamaiya and Kamlari.
- Land administration unit with in the local executive also needs to be formed and activated for the smooth implementation/formation of policies and laws
- Coordinate with Federation and Provinces for necessary technical, institutional and financial support and guidance related to localization of land administration.

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This policy brief is developed based on the national level land policy dialogue and district level discussions related to the 'Role of local governments towards land governance and policy formulation' and 'closing the gap between policies and practices related to people centered land governance' organized by Community Self-reliance Centre (CSRC), National Land Rights Forum (NLRF) and Aviyani Nepal in close collaboration with the Ministry of Land Management, Cooperatives and Poverty Alleviation (MoLMCPA) and Local Levels under International Land Coalition supported National Engagement Strategies (NES) for people centered land governance initiative in Nepal.

#### Recommendations for Civil Society Organizations working on Land Governance

- Organize policy dialogues on 'role of local governments towards land governance and policy making process' in each province among multi-stakeholders.
- Provide technical and financial assistance to local governments for formulating local land related policies and land use plans as well as for their effective implementation.
- Conduct the monitoring and evaluation of land related policies, laws and plans at all level.
- Educating the communities about news laws and policies and its importance

## Introduction

The land community in Nepal has been engaging in significant debate and discourse about the scope, importance and need of paradigm-shift in both policy formulation and implementation in the post Constitution era. One of the thematic areas of such discussions has been the ‘localization’ of land governance and policy-making process, where the role of local government remained at the center of the dialogue.

The Government of Nepal adopted the current Constitution in 2015 with provisions for localization of land governance system and policy making process. The policies and laws pertinent to localizing land governance are yet to be fully operationalized. The vast gap is observed between ‘policy imaginations’ and ‘grassroots realities’. It is attributable to the systemic error and procedural deficiencies widespread in the policy making process. The reluctance of central government to facilitate local and provincial governments to exercise their power related to land governance has further complicated this process. As a result, land tenure insecurity continues to exist as a significant impediment to the wellbeing efforts of landless, land-poor, small-holders, women, Dalits and indigenous communities.

In this context, this policy brief aims to systematically synthesize the discussion related to the ‘Role of local governments towards land governance and policy formulation’ at the High-level Land Policy Dialogue organized on 23<sup>rd</sup> February 2022 in Dhangadhi, and district level discussions organized

in Kailali, Kanchanpur, Sunsari and Morang among the local governments on ‘closing the gap between policies and practices related to people centered land governance’ from December 2021 to March 2022 and present key recommendations for people centered land policy formulation and their true implementation at the local level.

## Policy provisions

The Federation, the Province and the Local Level exercise the state power in accordance with the Constitution and law (Art.56 [1, 2]). Distribution of the State Power are described in the Article 57 of the

Constitution. Where, the powers of the Federation; powers of the Province, concurrent powers of the Federation and Provinces; powers of the Local Levels and concurrent powers of the Federation, Provinces and Local Levels are presented clearly on the Schedules: 5, 6, 7, 8 and 9 of the Constitution and such powers shall be exercised in accordance with this Constitution, federal laws, provincial law and local laws (made by Rural Municipal Assembly or Municipal Assembly). Powers pertinent to land and related sector are divided among the 3 levels of the government. According to the report on the Unbundling of the State Power, Land related power is distributed as depicted below in the table:

**Table 1: Land related rights among 3 levels of Federal Democratic State of Nepal**

1. FEDERAL GOVERNMENT	
<b>Schedule 5</b>	<b>Land Use Policy</b>
	<ul style="list-style-type: none"> <li>• Policy, Law, Criteria, Plan and Regulation related to land use</li> <li>• Mapping use, capability and appropriateness of land</li> </ul>
<b>Schedule 7</b>	<b>Land Use Policy and related Law</b>
	<ul style="list-style-type: none"> <li>• National Land Use Policy and related law, Guideline and Regulation</li> <li>• Manage national records of private, government and public land</li> <li>• Land acquisition related laws, guidelines and regulation at national level and facilitate, distribute and fix the compensation of acquired land</li> <li>• Land related international contact, coordination and cooperation</li> <li>• Policy and criteria for rehabilitating landless, including Dalits, Freed Kamaiya, Kamlari, Haliya, Harawa and Charawa</li> <li>• Criteria for land deeds transfer</li> </ul>
<b>Schedule 9</b>	<b>Management of Informal settlers</b>
	Formulate national level policy, law and guidelines for the management of informal settlers
2. PROVINCIAL GOVERNMENT	
<b>Schedule 6</b>	<b>Land Management and land records</b>
	<ul style="list-style-type: none"> <li>• Land management (also leasing lands), safer settlement, land administration (land registration, ownership transfer, and cross-off the record), land survey, land pooling and land use</li> </ul>

	<p>related Provincial Level Policy, Law, Guidelines formulation, implementation and regulation</p> <ul style="list-style-type: none"> <li>Records management of private, government and public land</li> <li>Establish the control points for land mapping and conduct land survey at provincial level</li> <li>Formulate and implement Policy and guidelines for rehabilitating landless, including Dalits, Freed Kamaiya, Kamlari, Haliya, Harawa and Charawa</li> <li>Facilitate and coordinate in land acquisition for government purpose, determine the compensation, and its distribution - resolve the land disputes.</li> <li>Set the criteria related to land ownership certificate distribution and implementation of the policy to end the dual ownership over land</li> </ul>
	<b>Management of Guthi Land</b>
	<ul style="list-style-type: none"> <li>Prepare, implement and regulate Guthi land management related policies laws, guidelines and plans.</li> <li>Manage the records of land and property under the public Guthi (Trust land)</li> <li>Coordinate with the Federation, and Local Levels for Guthi land management</li> </ul>
<b>Schedule 7</b>	<b>Land Policy and related Law</b>
	<ul style="list-style-type: none"> <li>As per provisioned on the Schedule 6</li> </ul>
<b>Schedule 9</b>	<b>Landless Squatter Management</b>
	<ul style="list-style-type: none"> <li>Implement and regulate the policy, law, and guidelines related to landless squatter management.</li> <li>Manage settlement and livelihood for landless squatter at provincial level and coordinate with the local level</li> </ul>
<b>3. LOCAL GOVERNMENT</b>	
<b>Schedule 8</b>	<b>Land Revenue Collection</b>
	<ul style="list-style-type: none"> <li>Land and House ownership certificate distribution</li> <li>Manage the records related to land and house ownership certificate distribution as per the provincial criteria</li> <li>Land records as per the categorization</li> <li>Land Plot separation, prepare land record and protection of local land</li> <li>Facilitate and coordinate in land acquisition for government purpose, determine the compensation, and its distribution</li> <li>Resolve the land disputes</li> <li>Maintain the records of land with in the world heritage and with archeological importance including the forest, and watershed.</li> </ul>
<b>Schedule 9</b>	<b>Landless Squatter Management</b>
	<ul style="list-style-type: none"> <li>Identify and record the landless squatter at local level as per the Federal and Provincial law.</li> <li>Provision for settlement and livelihood for landless squatters t local level.</li> </ul>

The Local Government Operation Act, 2017 has stipulated number of arrangements

related to authorities, duties and responsibilities of the local government. It has also mentioned

the rights of the local governments [part 3 Clause 11 (2.N)] about [1] measurement and mapping of local lands, demarcation of individual plots, regular updating, registration, transfer of land/ housing ownership and cross-off the records; [2] distribution of land ownership certificate and record management; [3] land records as per the land classification; [4] land acquisition for public purpose, coordinate and facilitate for fixing the compensation and its distribution; [5] coordination and cooperation for land mapping and fixing land ownership.

Land Use Act, 2019 requires Federation, Provinces and Local Levels to prepare vision paper (Baseline) before preparing the land use plans (Clause. 6). Land use plans prepared based on the vision papers need to be approved from the respective Land Use Council at each level. Local Land Use Council can facilitate the changes in the designated land use category if requested by the concerned land owner. To change the category of the land, Local Land Use Council can request to Provincial Land Use council which ensures the relevance of the requested change and requests to the Federal Land Use Council with evidences. Based on the evidences, Federal Land Use Council makes final decision about changing the category as per the request. Land Use Councils and Implementing Committee are provisioned as 'land use implementation structure' at 3 levels. Land Use Councils approve land use plans of the respective government while Implementing Committee implements the approved plans.

## Current practice and the gap

Policy provisions pertinent to localization process for the land administration is necessary condition but it is not sufficient in itself. Rural Municipalities and Municipalities have the power to implement and regulate the laws and policies related to the land administration and governance initiatives as presented in the table above based on the Schedule 8 of the Constitution. Meanwhile the management of landless squatter is of common responsibility of the 3 levels, for which local levels are rarely or never consulted. Despite of the rights, only very few (3 out of 753) local levels have formulated local Land laws and according to the representatives presented in the discussion 'they were never consulted by the Province or Federation to develop strategy or plan' to resolve the problem of landless squatters.

Similarly, as per the Part-2 Clause-6 of the Land Use Act, 2019, local land use council shall categorize land within their jurisdiction as per the fixed criteria as well as following the procedure provided by the MoLMCPA. Meanwhile, Department of Survey has prepared the land use map for the local levels, which hardly represents the ground reality as it is based on the old data. Local governments are expected to update those maps in principle. Existing technical human resource with local government is inadequate to perform such duty on time effectively. Additionally, local governments have been receiving support from non-governmental agencies, which

are also limited with technical expertise. Therefore, the rigorous exercise for categorization of its land at local levels is yet to be started.

Local Government Operation Act, 2017, Clause 11[2.N] allows local governments to act decisively on providing land ownership certificate including the mapping of local lands, ownership transfer, update land records, record keeping as per the categorization of land, land acquisition and compensation related works. As of now, these provisions are confined in the papers because local governments have not yet formulated relevant laws, policies or plans. Land services are delivered by the institutions under Federation at local level. For example, currently National Land Commission is working to formalize land tenure rights of landless including the Dalits and informal settlers where Local Levels are denied to initiate land mapping on their own but compelled to rely on the Department of Survey of the Federation.

## Discussion

Speakers of the discussion program argued that available policy infrastructure at national level provide solid base for local governments to formulate required policies. 'Land is subject of public concern' and requires meaningful participation and involvement of local people in decision making process related to land management and its governance. Local levels are best positioned to protect, manage and utilize land resources delivering better land services at local level. Through the

ecosystem of partnership, Local governments can be enabled for important initiatives including to prepare database and information system of land, formulate required local land laws and policies within its jurisdiction.

Local governments have the right to collect land related data and prepare up to date data base that is to be used for evidence based local level planning and decision making. Land use maps provided by the Survey Department contain old data. Local government needs to update them and categorize available lands in the necessary and proper land use categories. Currently, the necessary institutional mechanisms that can best coordinate and collaborate with central and provincial governments for localization of Land Administration, land related policy formulation and planning is nonexistent and this should be one of the priorities of the local governments.

In our society, one of the significant steps towards shifting power to communities is the recognition of their land rights by the state in reality effectively implementing related legal and constitutional provisions. Poor, marginalized and indigenous people are hardly recognized by the current land policies but the local governments can institutionalize their rights based on the local specificities and needs through local land laws and policies. People to land relations needs to be fundamentally improved by improving laws and policies that can breakthrough transformative changes and shift the power to communities in real sense.

The local socio-economic dynamics are inextricably intertwined with the changes in land sector. The rapid fragmentation of agricultural land, converting agricultural land into housing plots, leaving agricultural land idle, acquiring agricultural land for physical infrastructure development and land degradation are few of the land dynamics observed in the recent years. All of these dynamics facilitate alienation of land from peasant communities. In order to tackle these problems, local government need to be well equipped with the policies, tools and resources.

Moreover, people to land relations are changing and becoming fragile for land-poor, women and indigenous peoples. Non-agricultural households are owning increased chunk of land and utilizing it except for agricultural production. Inappropriate development model followed in Nepal has been putting increased pressure on the land resource. In this context, local governments can put their efforts for integrated land and agrarian development plan and its implementation as a campaign to achieve socio-economic development, and social justice objective. In this process localization of land administration can play important role.

The issues of bonded labor, though out-lawed, still exists in the form of Kamaiya, Kamlari, Haliya and Harawacharawa, requires the governments to effectively act upon to correct the past mistake (the haphazard categorization) and rationally conclude the emancipatory process. Many of the freed bonded laborers including the Harawacharaw are

still waiting to be included in the emancipatory process and brought out from the vicious trap of modern slavery, poverty, inequality and illiteracy. For this mission, the local governments can play pivotal roles if they are provided with policy level facilitation, financial support and necessary coordination from the Federation and the Province.

Local government has key roles for improved land governance and policy making but it requires multidimensional assistance for Provincial and Federal Government as well as from other stakeholders to effectively play those roles. Therefore, collaboration and coordination within and across all the government levels is necessary to resolve the common problem related to land. Rights of local level related to land administration and squatter management need to be further clarified and simplified and transferred to the local level immediately. Local governments can initiate discussion and seek support in the areas such as scientific land categorization, sustainable land use planning, policy making and managing the required resources to effectively implement key policies and laws.

## Opportunities

Establish an ecosystem of partnership to enable smooth coordination, cooperation and collaboration to support Local governments in implementing important initiatives including to formulate required local land laws, policies and realistic plans.

Maintain inclusive and user-friendly land information system that can provide up-to-date and necessary

data also disaggregated by gender, type of land, and type of land tenure for evidence-based planning and decision making, especially to make the development intervention sustainable and promote responsible investment.

Similarly, establish clear policy infrastructure that can guide the sustainable land management and governance at local level in order to speed-up the localization of the land administration system.

Formalization of land tenure rights for landless including Dalits and informal settlers in collaboration with the National Land Commission, preparation of land use plans to ensure sustainable land use clearly categorizing the available land into various land use categories and dignified rehabilitation of bonded laborers are some other important opportunities for the local government.

## Challenges to be addressed

Centralized land administration system is one of the biggest challenges towards the localization of land governance. That makes changed policy framework ineffective. As a result, there is high risk of state mechanisms being less accountable to the law and to the people, ultimately leading to the system failure. The condition of land offices being reluctant towards local led land governance process has not changed. It is jeopardizing the prospectus of cohesive coordination and collaboration among Federation, Province

and Local Levels in addressing the problems of landlessness, informalities of land tenure, dual land ownerships, land inequality, land acquisition, compensation and haphazard land use is worsening every day. Local levels have limited human resource which is inadequate to tackle technicalities of land governance and policy making at local level. That is why local governments lag behind in formulating required land laws and local land use plans. Given this scenario, role of local levels towards land governance and policy making needs to be recognized and enhanced.

## Conclusion

From the lens of the land, there is a slow progress towards policy and program commitments at the local level. The federation and provinces need to pro-actively encourage local levels and enable them with necessary technical, institutional and financial resources for the people centered land governance and policy making practice at local level. Provision of encouraging policy needs to be in place to systematically establish a solid legal base for local levels. Good policy or laws is not enough in itself but the close coordination among three levels of the government is also required to implement those laws and to drive the positive changes for local people.

### 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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