

Gender and Economic Policy Discussion Forum

The Draft National Land Reform Policy – Implications on Gender and Equity

FORUM X | 29 OCTOBER 2013

BRIEFING NOTE 10

HIGHLIGHTS / KEY POINTS

- The Draft National Land Reforms Policy aims at providing agricultural and homestead land to the landless poor, particularly the SCs, STs and other marginalized communities.
- In the light of increasing feminization of agriculture and de-facto female headed households in the rural areas, the policy gives special emphasis on land rights for women.
- Women need land rights as landlessness has implications on their and their family's (particularly the children) vulnerability with ramifications in access to food and healthcare.
- Land is a critical resource which determines the dynamics of power, status, personal and economic independence and the ability to participate within the family as well as the community.
- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR), which came into effect on 1st January 2014, also falls under the purview of the draft policy.
- RFCTLARR aims to ensure a humane, participative, informed and transparent process for land acquisition and provide just and fair compensation to those whose land has been acquired or proposed to be acquired.
- The draft land policy though laudable in intent has several shortcomings. The main criticism being that the policy can only serve as recommendatory as land is a State subject.

On 24th July, 2013 the Department of Land Resources of the Ministry of Rural Development, Government of India released the Draft National Land Reforms Policy for discussion¹. As per the draft policy, there is a need to revisit land reforms in the face of increasing demands on land for housing and industrialization, feminization of agriculture and landlessness of nearly half of the country's rural population as well as for stagnating agricultural yields. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR), which came into effect on 1st January 2014, also falls under the purview of the draft policy.

Land reforms in India were a major policy initiative in the post-independence period. To check the exploitative and iniquitous revenue system established under the colonial rule, a notable achievement of land reforms during this period was the abolition of the Zamindari system. In the early 1960s land reforms disappeared from India's development plan as food crisis shifted the entire focus on to the green revolution. Rural unrest in the late 1960s and early 1970s brought it back into the agenda, leading to reduction of land ceiling, introduction of family based ceiling, tenancy reforms and more. With the advent of neo-liberal policies in the 1990s, land reforms again went off the radar so as to not interfere with the free flow of capital in the market. However, persisting concerns of poverty, food security and resource rights made it pertinent to bring land reforms to the fore. The draft National Land Reform Policy thus aims to address these concerns, with special emphasis on the rights of women and other marginalized groups.

Key features of the policy with regard to Gender and Equity

The policy recommends the use of Tehsil, District, Region and State level master plans to create a large

pool of land to enable its equitable allocation on a priority basis to the marginalized, especially marginalized women. The land pool, to be created by States within a specified timeframe, will comprise of agricultural waste land, unutilized land acquired for industrial or development purposes, ceiling surplus land, land made available by removal of illegal occupants and correction of land records, and so on. The policy then suggests distribution of the available land to eligible landless poor, particularly the Scheduled Castes, Scheduled Tribes and other marginalized and deprived landless population, in a time bound manner for both agriculture and housing. Further, it states that the allotment of land should be made in the name of the women members of the eligible families.

The policy gives special emphasis to land rights for women stating that 75% of all female workforce and 85% of all rural female workforce in the country is involved in agriculture. It adds that rural households are increasingly becoming de-facto female headed households, due to widowhood, desertion, or male out-migration. Thus it recommends that women's claims should be directly recognized in all government land transfers. For instance, it states that land distribution to landless families must only be in women's name rather than joint titles with husbands. And 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. Likewise, it recommends adoption of a "group approach" i.e. granting group titles to women's groups for land cultivation and investment in productive assets.² It grants usufruct rights to women and talks about the need to review the Hindu Succession Amendment Act (HSAA) 2005 in terms of bottlenecks in its implementation. States have additionally been asked to promulgate laws to protect women's rights to adequate housing and land for instance by introducing Government Orders to mandate joint registration and joint titles for marital property. The policy, additionally, recommends an all women committee at the Panchayat level for Common Property Land Resource Management.

In sum, the policy focuses on the landless poor, protecting the land rights of marginalized groups such as women, Scheduled Castes, Scheduled Tribes and nomads. It also focuses on creation of land use plans, creation of land banks, recognition of the importance of common property resources and Gram Sabha empowerment.

Why do women need land rights?

Women make essential contributions to agriculture in developing countries. On an average, women comprise 43 percent of the agricultural labour force in developing countries, ranging from 20 percent in Latin America to 50 percent in Eastern Asia and sub-Saharan Africa.³ In India, as per Census 2011, 4.3 lakh women are engaged in agriculture, forestry, fishing and hunting. 41.1% of female main and marginal workers are agricultural labourers and 24.0% are cultivators.⁴ Rural women are the main producers of staple crops such as rice, wheat and maize. They contribute significantly to secondary crop production such as legumes and vegetables, which is grown mainly in home gardens and is often the only food available during lean season. Women are the essential custodians of agro-bio diversity and also provide most of the labour for post-harvest activities such as storage, stocking and processing.⁵ Yet, women face a consistent gender gap in access to productive assets, inputs and services. In India, for instance, 12.8% of women hold operated (cultivated) land holdings, which comprise of 10.4% of total operated area.⁶

Land as an asset has permanence that few other assets possess. Women's landlessness has implications on their and their family's (particularly the children) vulnerability and opportunities of empowerment. Also, due to the existence of inequalities within the household in terms of access to food and healthcare, women's economic status is not necessarily determined by the economic status of their family. If there is shortage of means women's needs are more likely to be overlooked. Further, studies have found that women spend more on household consumption, whereas, men spend significantly on items of personal needs such as tobacco and alcohol.⁷

Access to critical resources such as land determines the dynamics of power, status, personal and economic independence and thus the ability to participate within the family as well as the community. "These issues are in turn related to patterns of gender discrimination in education, work, income, family responsibilities, and participation in decision-making processes at all levels; a cyclical pattern of discrimination which exists in both developing and developed countries."⁸ Rights in land for women can, therefore, reduce their own as well as

the household's risk of poverty, ensuring women's and their children's well-being. This is particularly so in cases of divorce, desertion, separation and widowhood, wherein absence of independent economic resources can render women economically vulnerable. Thus, rights in land can have direct and indirect benefits for women. It has the direct benefit of economic empowerment through production possibilities in agriculture, livestock, etc. and thus household food security. Indirectly, it can enhance women's bargaining power, especially within the household and contribute towards their sexual autonomy as well as reducing violence against them.⁹

Further, land titles for women are also essential for them to be able to access credit. Credit schemes, bank loans, government welfare benefits, etc. can only be availed on proof of land ownership or residential proof. Access to credit becomes particularly important in light of increasing male out-migration and female headed households. Improved farm technology and infrastructure and consequent production and income can then reduce out-migration. The demand for women's rights in land is ultimately about equality of rights over productive resources, which has implications on the economic (empowerment), social (protection from domestic violence/bargaining power), ideological and political spheres.¹⁰

Land rights for women can contribute towards environment sustainability as well. Providing secure land rights to those who actually work on land, have long-term interests in the land's fertility and sustainability, may incentivize investments in measures such as erosion control and lower usage of fertilizers and pesticides. Studies have shown that women use their resources sustainably; women practice traditional farming methods and because of their natural resources dependent household responsibilities of obtaining food, fuel, and water, they have a vested interest in protecting them.

Often inadequate laws and legislations restrict women's access to land, providing them only secondary land titles. And even if women have the statutory right to own and inherit housing, land and property, tradition and dominant social attitudes may often still prohibit these rights from being claimed or enforced in practice. In India, women have considerable legal rights to own and inherit land, yet few women are able to claim these

legal rights. For instance, the policy prescription of women's name in single or joint title of land as per the Sixth Five Year Plan has been a progressive pro-women policy. However, at the ground level its implementation has been slow. Studies have found that men continue to singularly make decisions regarding the land under the joint patta system, often resorting to domestic violence to coerce women.¹¹

Further, as per the Hindu Succession Amendment Act 2005, Hindu women are equally entitled to inherit agricultural land as men, across States. However, negotiating such rights in an overtly patriarchal set up, especially in rural India, becomes extremely difficult. A law prescribing the rules of ownership in itself, is not a sufficient condition to prevent gender discrimination and social stigma that thwart women's ability to effectively exercise genuine 'control' over land. Women's lack of awareness of existing laws, regulations and legal rights is one of the strongest impediments to their ownership and inheritance of land, especially in the rural areas.

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

The stated purpose of the Act is to ensure a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families. And, provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement.¹²

Describing the Act as a landmark achievement, Charanjit Singh¹³ states that the Act was shaped after widespread consultations, the process taking 15 years. The Act repeals the Land Acquisition Act of 1894, its key features being transparency, participatory and the rehabilitation and resettlement processes. The Act aims to ensure sustainable livelihood of the affected persons and consent of the land owner (as opposed to forceful

acquisition) has been inbuilt in to the Act to ensure participation of the affected families. The Act additionally offers the option to forego acquisition if the land can be taken on lease. The Act also entails creation of a dedicated authority for disposal of disputes and ensures that there shall be no displacement before rehabilitation. Further, the Act specifies that a Social Impact Assessment study must be carried out before the acquisition in order to determine the public purpose of the acquisition, the number of affected families and the extent of impact on public and private property as well as on the natural environment.

As per the Act, State led acquisitions need to be accompanied with determination of a public purpose of the acquisition which shall outweigh the social cost and impact of the acquisition. For public-partnership projects, where the ownership of the land still rests with the government, the Act states that the consent of at least 70% of the affected families is required. Further, acquisition of land for public purpose by private companies requires at least 80% of consent from the affected families.

In terms of dealing with marginalized groups, the Act states that as far as possible, no land shall be acquired in the Scheduled Areas. In cases when land is to be acquired in Scheduled Areas prior consent is to be obtained. The Act additionally stipulates that there shall be development of alternate fuel, fodder and non-timber forest produce resources on non forest lands (within a period of five years) and provision of land for social and community gatherings in the resettlement areas for the affected families.

Concerns about the Draft Policy

Though laudable in intent, the general comment about the draft policy is that it is too ambitious and appears as a very preliminary draft with inconsistent usage of certain terminologies and sweeping recommendations without the feasibility of implementation. One of the most important criticisms that has been levied against the policy is that land being a State subject with State laws on land ceiling, land fragmentation and rehabilitation, the policy can only serve as recommendatory to the States. The policy has thus also been viewed as a populist measure targeting the 2014 elections. The following paragraphs state the major issues with the draft policy.

One of the reasons for revisiting land reforms, according to the draft policy, is the utility of small size of land holding. However, it is important to question if this argument is still valid given the increasing capital intensity of agriculture. If not, then the idea of revisiting land ceiling limits, as recommended in the policy, needs to be revised.¹⁴ The policy also does not specify a time frame for its implementation, which needs to be declared at the outset. The policy has additionally been criticized for its focus on the rural poor and landless and not on the urban poor, those living in un-regularized colonies, particularly, poor urban women.

The policy needs to resolve several contradictions as well. It does not state clearly who would prepare the land use plans; whether it is going to be a top-down process or a bottom-up, decentralized and democratic process and if Gram Sabhas would be involved in the process.¹⁵ The policy additionally talks about creation of land pools as well as land banks. Kulkarni states that the idea of land pools is very creative as it makes available excess land for the use of collectives of marginalized groups such as women, Scheduled Castes and Scheduled Tribes. Land banks would also make available land for the marginalized groups but through the market. There is clearly an overlap between the two concepts and the policy needs to resolve the contradiction between them.¹⁶ Further, the policy needs to resolve if women should have independent or joint titles in land.¹⁷

One of the ways in which the policy seeks to make land available for the landless poor and the marginalized groups is by eviction of encroachers from government land, wasteland and common land. However, it needs to define who it means by encroachers as in some instances a long standing inhabitant belonging to a marginalized group might be displaced. For instance, states Kulkarni, in Maharashtra many Dalit groups have been using Panchayat land as 'encroachers'.¹⁸ Eviction of such marginalized groups for illegally occupying land would defeat the very purpose of the policy.

The idea of wastelands itself is problematic. The policy estimates the total wasteland in India to be around 63.85 million hectares (20.17% of the geographical area). Sarin argues that the idea of 'wasteland' is faulty as it overlaps with commons and customary lands. She states that the British called uncultivated common land as wasteland as they generated no revenue. Our land

records continue to treat such commons as waste. Such categorization of land as wasteland following the assumption that all land should be under productive cultivation is flawed as, she adds, diverse communities use land in diverse ways. She adds that often there is an overlap between formal land rights and customary land rights as historically large tracts of commons such as forests and wastelands have been declared State property in spite of pre-existing multi-functional customary uses.¹⁹ The draft policy thus needs to not only re-define wastelands recognizing the various pre-existing rights on the land but also ensure that redistribution of public land entails only public land and is not encroaching upon customary rights of others.

With regard to tenancy, the policy rightly recognizes that the clause of adverse possession (that enables the lessee to own the land with its continuous possession) acts as a dis-incentive to lease out land and hence it shall be removed. The draft policy thus recommends automatic resumption of lease on expiration of the lease period. This too can, however, be equally demotivating for the landowner to lease out. The policy must strive to protect the rights of both the landowner and the tiller.

The policy document talks about empowerment of Gram Sabhas (particularly in Scheduled Areas) and has entrusted them with several responsibilities. However, in reality Gram Sabhas are barely functional at the ground level. Also, as per the draft policy, the committee to be formed at the Panchayat level for the management of Common Property Resources shall comprise of only women. While the intention of giving women a say in the management of commons is correct, such exclusive right to a particular group however may reduce the possibility of dialogue with other groups, particularly other marginalized groups. Additionally, the policy is restricted in its consideration of commons to lands, excluding water bodies and flood plains.²⁰

Certain issues have been flagged with respect to the RFCTLARR Act in particular. In State led acquisitions the Act entrusts State Governments with the determination of a legitimate public purpose. Such an assignment of responsibility, however, privileges one party namely the land acquirer over the land owner wherein the former could very well exploit the situation to its benefit. Further, for the purpose of acquisition the Act demands

consent of the land owner(s) only and likewise compensation is also offered only to them. This way the Act fails to recognize how other members of the family, particularly women, might be dependent on the tract of land acquired and denies them a say as well as adequate compensation.

Additionally it is also argued that in order to deal with the current state of agrarian crisis land allocation alone to the marginalized groups is not sufficient. A comprehensive package of agrarian reforms with additional public investment in sustainable technologies, income protection, land development, water conservation and rural credit is required.²¹

Recommendations

As mentioned above, the policy talks of individual as well as joint titles for women. Agarwal²² states that joint titles are better in the absence of any titles for women. However, she adds, individual titles would work out better for single, widowed, separated, divorced or abandoned women. Additionally, she states that there is merit in giving groups of women joint cultivation rights in agricultural land as it can foster economies of scale, provide consolidated holdings and increase access to inputs, credit and bargaining power.

Regarding Public Land Banks, Agarwal²³ suggests that such banks should be created at the Panchayat level where land owners would voluntarily deposit land parcels that they do not wish to cultivate. The bank may then lease out the land to disadvantaged farmers, such as women, Scheduled Castes and Scheduled Tribes. The depositors would receive an incentive payment on their deposit and would be free to withdraw their land with due notice. The lessees on the other hand can be provided access to institutionalized finance, quality inputs and market.

Considering the social and cultural roles and constraints of women, it is very important that the policy focuses on the spread of legal literacy and awareness among women as well as on women friendly administrative procedures. Most land related negotiations usually take place in the presence of men, whereas women due to lack of access to information and stipulations of their domestic responsibilities are unable to attend public hearings. Lack of awareness and patriarchal notions held by administrative departments can also prove detrimental to the rights of women. (A recent study

revealed that even after years of implementation of the Hindu Succession Amendment Act 2005, lack of awareness existed on the part of the women as well as the Revenue Department, which was the responsible implementing administrative department.²⁴) Thus, legal aid, training and capacity building are required for the target group as well as for the people associated with land administration.

The policy must include mechanisms to check duress as well as distress sale by women and other marginalized groups. It must also make available gender disaggregated data on land ownership and land transactions. Currently there is no comprehensive data on women's land ownership, which is essential to understanding the scope of the policy.

The draft policy recommends the use of Geographical Information System (GIS) and preparation of cadastral maps for modernization of land records. However, it must ensure that top-down mapping processes are accompanied with local knowledge as there might be conflicting claims and usages on the ground. Kulkarni²⁵ suggests that cadastral maps on the availability of resources can be used by the Gram Sabhas for effective distribution and to check if rights of certain people are being infringed upon, particularly with regard to commons.

Thus, the policy must strive towards strengthening the role of Gram Sabhas, enabling them to undertake bottom-up land use plan as well as settlement of disputes on ownership and claims, particularly those concerning the marginalized groups.

The Draft National Land Reform Policy 2013 is certainly progressive but there are several issues and concerns that need to be resolved for it to be able to serve as an effective and just policy on land. It needs to recognize the multiple uses of land and address aspects of inclusive growth and sustainable development. Failure of past policies on land ceiling and land re-distribution should also be looked into in order to make the current policy more effective. Since it is only recommendatory in nature, how it will intervene with State laws on land needs to be charted out. Kulkarni suggests that the policy can serve as an overarching framework for law on land reforms. It can serve to introduce certain minimum principles of justice as binding and non-negotiable on the States in matters of land allocation and use.²⁶ Agarwal adds that recent studies have indicated a decline in interest in pursuing agriculture due to the low returns compared to the efforts it demands. There is thus a need for supplementary policies to support people engaged in agriculture in order to increase productivity.²⁷

Endnotes

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⁶Bina Agarwal citing Agricultural Census (2010-11), Government of India figures.

⁷Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press, 1994), 28.

⁸Mayra Gomez and D. Hien Tran, "Women's Land and Property Rights and The Post-2015 Development Agenda" in *Addressing Inequalities Global Thematic Consultation - Call for Proposals for Background Papers*, October 2012, 6.

⁹Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia*

¹⁰*Ibid*; see also Bina Agarwal and Pradeep Panda, 'Toward Freedom from Domestic Violence: The Neglected Obvious', *Journal of Human Development* (New York), 8(3): 359-388, 2007.

¹¹Sanjoy Patnaik and Sarita Pradhan, "Securing Land Rights for Women through Institutional and Policy Reforms"

¹²Act No. 30 of 2013, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, Friday 27 September 2013, Gazette of India.

¹³Charanjit Singh at GEP Discussion Forum X, 29th October, 2013.

¹⁴With regard to ceiling the draft policy recommends that every state should revise its ceiling limits and impose ceiling not only on ownership of land holdings but also on operational land holdings to prevent concentration of land via leasing. Further it recommends that exemptions made to religious, educational, charitable and other institutions should strictly be discontinued. It also suggests mechanisms to check fraudulent practices and preparation of a proper inventory of ceiling surplus lands.

¹⁵Seema Kulkarni and Madhu Sarin at GEP Discussion Forum X, 29th October, 2013.

¹⁶Seema Kulkarni at GEP Discussion Forum X, 29th October, 2013.

¹⁷Ibid.

¹⁸Ibid.

¹⁹Madhu Sarin at GEP Discussion Forum X, 29th October, 2013.

²⁰"Query: FOR COMMENTS: Draft National Land Reforms Policy," Solution Exchange, Last accessed: 15th March, 2014. ftp://ftp.solutionexchange.net.in/public/decn/cr/Interim%20CR_Draft%20National%20Land%20Reforms%20Policy_CU_72.pdf.

²¹Harsh Mander, "Reviving Land Reforms?" Economic and Political Weekly XLVIII, 35 (August 31, 2013).

²²Bina Agarwal GEP Discussion Forum X, 29th October, 2013.

²³Ibid.; see also Bina Agarwal, "An Idea to Bank on." The Times of India, Thursday, January 2012.

²⁴Anisa Draboo, "Women and Land – Why is it Important?" Yojana 57 (November 2013): 25.

²⁵Seema Kulkarni at GEP Discussion Forum X, 29th October, 2013.

²⁶Ibid.

²⁷Bina Agarwal GEP Discussion Forum X, 29th October, 2013.

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